



2006

Getting the most from acquisition reforms: FAR 13.5 test provisions for simplified acquisition procedures, commercial-item acquisition



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ACQUISITION RESEARCH SPONSORED REPORT SERIES

**Getting the Most from Acquisition Reforms:
FAR 13.5 Test Provisions for Simplified Acquisition
Procedures, Commercial-item Acquisition**

30 December 2006

by

CDR E. Cory Yoder, SC, USN, (ret), Lecturer

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Prepared for: Naval Postgraduate School, Monterey, California 93943



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GRADUATE SCHOOL OF BUSINESS & PUBLIC POLICY
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Abstract

The past decade has seen a significant change in business practices within the Federal contracting arena. Acquisition reform initiatives have fundamentally transformed the protocols and processes the Federal Government utilizes to procure billions of dollars' worth of goods and services every year. Reforms provided under the *Federal Acquisition Streamlining Act (FASA)*, the *Federal Acquisition Reform Act (FARA)*, and the *Services Acquisition Reform Act (SARA)*, along with ensuing regulatory provisions in the *Federal Acquisition Regulation (FAR)*, have created a more business-to-business-like contracting methodology. One such methodology is the *FAR 13.5 Test Program for Commercial Items*. *FAR 13.5* allows the utilization of Simplified Acquisition Procedures (SAP) for all commercial-item designated goods and services up to and including \$5.5 million. The *FAR 13.5* provisions are aimed at improving the efficiency and effectiveness of Federal contracting processes. The *FAR 13.5* regulatory provision has tremendous potential to alleviate field contracting activities' work-in-process backlogs, improve cycle-time, reduce transaction costs, and increase customer satisfaction in the business processes designed to provide essential goods and services.

However, based on the researcher's review of the business decision protocol at many acquisition and contracting centers, and as a result of similar research conducted in 2004, 2005 and 2006, this text asserts many contracting activities may not be effectively utilizing the legislative and regulatory authority under *FAR 13.5* to garner desired efficiencies and effectiveness.

Therefore, the objective of this research study is to determine the extent to which the Navy's FISC (Fleet and Industrial Supply Center) activities are capitalizing on the legislative provisions and regulatory provisions of *FAR 13.5* and to make specific recommendations for improving the full utilization of the *FAR 13.5* commercial-item designation provisions.



This sponsored research study: 1) provides an overview of the applicable legislative and regulatory provisions, specifically *FAR 13.5*, and urges full utilization of the *FAR 13.5* provisions, 2) investigates current business practices within the Fleet and Industrial Supply Centers (FISC) related to the *FAR 13.5* regulatory provisions, 3) determines the extent to which FISC is reporting *FAR 13.5* utilization and the degree of effective and efficient utilization of the *FAR 13.5* provision, and 4) provides research conclusions and specific recommendations for better utilization of the *FAR 13.5* provisions designed to benefit all process-protocol stakeholders, including the FISCs, their supported customers, the Navy and, ultimately, the American taxpayers.



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- “The Naval Postgraduate School’s Defense-Focused Master’s Programs in Acquisition and Contracting,” *Navy Supply Corps Newsletter*, March-April 2004.
- “Lessons for Contingency Contracting, Humanitarian Operations in Uzbekistan,” *Army AL&T Magazine*, September-October 2002, pp. 38-40.
- “Creating Something from Nothing,” *Navy Supply Corps Newsletter*, July-August 1999.

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Disclaimer: The views represented in this report are those of the author and do not reflect the official policy position of the Navy, the Department of Defense, or the Federal Government.



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Executive Summary

The past decade has seen a significant change in business practices within the Federal contracting arena. Acquisition reform initiatives have fundamentally transformed the protocols and processes the Federal Government utilizes to procure billions of dollars' worth of goods and services every year. Reforms provided under the *Federal Acquisition Streamlining Act (FASA)*, the *Federal Acquisition Reform Act (FARA)*, and the *Services Acquisition Reform Act (SARA)*, along with ensuing regulatory provisions in the *Federal Acquisition Regulation (FAR)*, have created a more business-to-business-like contracting methodology. One such methodology is the *FAR 13.5 Test Program for Commercial Items*. *FAR 13.5* allows the utilization of Simplified Acquisition Procedures (SAP) for all commercial-item designated goods and services up to and including \$5.5 million. The *FAR 13.5* provisions are aimed at improving the efficiency and effectiveness of Federal contracting processes. The *FAR 13.5* regulatory provision has tremendous potential to alleviate field contracting activities' work-in-process backlogs, improve cycle-time, reduce transaction costs, and increase customer satisfaction in the business processes designed to provide essential goods and services.

The objective of this research study is to determine the extent to which the Navy's FISC (Fleet and Industrial Supply Center) activities are capitalizing on the legislative provisions and regulatory provisions of *FAR 13.5* and to make specific recommendations for improving the full utilization of the *FAR 13.5* commercial-item designation provisions.

This sponsored research study: 1) provides an overview of the applicable legislative and regulatory provisions, specifically *FAR 13.5*, and urges full utilization of the *FAR 13.5* provisions, 2) investigates current business practices within the Fleet and Industrial Supply Centers (FISC) related to the *FAR 13.5* regulatory provisions, 3) determines the extent to which FISC is reporting *FAR 13.5* utilization and the degree of effective and efficient utilization of the *FAR 13.5* provision, and 4)



provides research conclusions and specific recommendations for better utilization of the *FAR 13.5* provisions designed to benefit all process-protocol stakeholders, including the FISCs, their supported customers, the Navy and, ultimately, the American taxpayers.

The research concludes that while FISC activities are reporting and utilizing the *FAR 13.5* provisions, the FISCs are not fully capitalizing on the *FAR13.5* provisions. The FISCs can better capitalize on the provisions by making several changes in protocols and workflow structure to allow for a greater total utilization rate of the *FAR 13.5* provisions, and to ensure that those actions designated under the *FAR 13.5* provisions actually make effective and efficient use of the streamlined *FAR 13.5* protocols.



I. Introduction

A. Background

The past decade has seen a significant change in business practices within the Federal contracting arena. Acquisition reform initiatives have fundamentally transformed the protocols and processes the Federal Government utilizes to procure billions of dollars' worth of goods and services every year. Reforms provided under the *Federal Acquisition Streamlining Act (FASA)*, the *Federal Acquisition Reform Act (FARA)*, and the *Services Acquisition Reform Act (SARA)*, along with ensuing regulatory provisions in the *Federal Acquisition Regulation (FAR)*, have created a more business-to-business-like contracting methodology. One such methodology is the *FAR 13.5 Test Program for Commercial Items*. *FAR 13.5* allows the utilization of Simplified Acquisition Procedures (SAP) for all commercial-item designated goods and services up to and including \$5.5 million. The *FAR 13.5* provisions are aimed at improving the efficiency and effectiveness of Federal contracting processes. The *FAR 13.5* regulatory provision has tremendous potential to alleviate field contracting activities' work-in-process backlogs, improve cycle-time, reduce transaction costs, and increase customer satisfaction in the business processes designed to provide essential goods and services.

However, based on the researcher's review of the business decision protocol at many acquisition and contracting centers, and as a result of similar research conducted in 2004, 2005 and 2006, this discussion asserts many contracting activities may not be effectively utilizing the legislative and regulatory authority under *FAR 13.5* to garner desired efficiencies and effectiveness.

B. Research Objectives

The primary objectives of this research study are first, to determine the extent to which the Navy's FISC (Fleet and Industrial Supply Center) activities are capitalizing on the legislative and regulatory provisions of *FAR 13.5*, and second, to



make specific recommendations for improving the full utilization of the *FAR 13.5* commercial-item designation provisions to achieve maximum efficiencies and effectiveness of contracting processes and protocols.

This sponsored research study: 1) provides an overview of the applicable legislative and regulatory provisions, specifically *FAR 13.5*, and makes the case for full utilization of the *FAR 13.5* provisions; 2) investigates current business practices within the Fleet and Industrial Supply Centers (FISC) related to the *FAR 13.5* regulatory provisions; 3) determines the extent to which FISC is reporting *FAR 13.5* utilization, and the degree of effective and efficient utilization of the provisions; and, 4) provides research conclusions and specific recommendations for better utilization of the *FAR 13.5* provisions designed to benefit all process protocol stakeholders, including the FISCs, their supported customers, the Navy and, ultimately, the American taxpayers.

C. Research Design and Methodology

The **research design schema**, or methodology, consists of several important elements necessary to develop a thorough understanding of the *FAR 13.5* provision, its applicability to FISCs' protocols and processes, the business implications and impacts of *FAR 13.5* provision sub-optimization (under-utilization or mis-utilization) versus maximum optimization and capitalization. The research also analyzes the processes and protocols at FISC to determine the extent of *FAR 13.5* participation as it is being reported, and the *quality* of the utilization.

A **thorough literature review** was conducted to include, but is not limited to: 1) Federal legislation; 2) *Federal Acquisition Regulation (FAR)* and *Defense Federal Acquisition Regulation Supplement (DFARS)*; 3) Office of the Secretary of Defense (OSD), Department of Defense (DoD), Department of the Navy (DON), Naval Supply Systems Command (NAVSUP) policies; and, 4) Commander, Fleet and Industrial Supply Center (COMFISC) and Fleet and Industrial Supply Center (FISC) San Diego



instructions, directives, guidance, and published business protocols as related to the *FAR 13.5* provision.

Additionally, the **researcher established close communication with key acquisition and contracting policy and practitioner leaders** to obtain information and insights for the project. These key acquisition and contracting policy and practitioner leaders included, but were not limited to: 1) Dr. Jacques Gansler, the former Undersecretary of Defense and now Vice-President for Research at the University of Maryland; 2) Mr. Tom Brosnan, Chief Counsel and legislative attorney for Representative Tom Davis (R-VA), Chairman, Congressional Committee on Government Reform; 3) CAPT Steve Shapro, NAVSUP Code 02; 4) CAPT James Barnard, COMFISC Lead Executive, and 5) other senior leaders, policy makers, warranted contracting officers, and 1102 series contract specialists practicing in the field.

The research effort was supported, in part, by a Naval Postgraduate School, Graduate School of Business and Public Policy (NPS GSBPP) student MBA project team, hereafter referred to as the “research team.” The research team operated under the primary advisorship and direction of this report’s author. The student team was selected based on: 1) specific skill sets and attributes; 2) prerequisite course work in contracting and business protocol; 3) motivation to produce and contribute to a product meeting both academic and broader Navy needs.

The **rationale and design of the research schema** is:

1. To provide the legal and regulatory premise for the *FAR 13.5* protocol, including the intent and vision of legislators instrumental in creating the statutory language resulting in the *FAR 13.5* provisions,
2. To examine established protocols related to the conduct of purchases utilizing *FAR 13.5* provisions for efficiency and effectiveness, and to discover whether these established protocols meet the intent and vision of the legislation,



3. To determine whether FISC is fully capitalizing on the *FAR 13.5* provisions to maximize efficiencies and effectiveness, and,
4. To present conclusions and make specific recommendations for the Navy and FISC to maximize the effectiveness and efficiencies of the *FAR 13.5* provisions.

The Fleet and Industrial Supply Center (FISC) San Diego was selected for representative data gathering, for conducting protocol and process reviews, and for contract file examination, review and analysis. The research team conducted, in essence, Procurement Management Assessment Team (PMAT) review at the FISC San Diego contracting activity. Among many required functions, the research team was chartered to determine: 1) the extent to which the *FAR 13.5* provisions were being utilized as related to the total population of eligible requirement candidates for such utilization, and 2) when *FAR 13.5* protocol was specifically indicated and employed, as reported by FISC on DD350, the extent to which the full spirit and intent of the *FAR 13.5* provisions had been met.¹

The San Diego site was particularly well-suited for the protocol review in that: 1) it is co-located with COMFISC, which maintains the initiative for organizational modeling and FISC performance; 2) the location provided a cost-effective and proximate location to the Naval Postgraduate School, wherein the researchers could easily transit for on-site data collection; and 3) the San Diego location has a strong reputation for open communication, innovation and customer-focused support, lending itself particularly well to an investigation of innovative business operations.

D. Scope and Limitations

This project includes: 1) an introduction to the research, 2) legislative, regulatory, and governing policy reviews, 3) representative data presentation, 4) synthesis, analysis and interpretation of the data, 5) specific conclusions,

¹ Note: more detailed discussion is provided later in this research report.



recommendations and specific future courses-of-action, and 6) barriers to implementing proposed courses-of-action and how those barriers can be mitigated.

The project was designed and conducted within specific boundaries to ensure an adequate level of research depth and breadth while fully meeting the research sponsor's and the researcher's objectives pursuant to the research proposal.

The research encompassed statutory, regulatory, governing instruction and guidance reviews, interviews, and activity protocol review at the FISC San Diego site. Although only FISC San Diego protocols and practices were examined by the research team, it is the contention of the researcher that the findings herein are applicable to the broader array of Fleet and Industrial Supply Centers' operations, to the Navy, and more broadly, to other DoD agencies. Additionally, the research may be utilized as a template for analysis for *FAR 13.5* implementation and protocol change at organizations other than just FISC San Diego.



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II. Background, Review and Applicability of the *FAR 13.5* Commercial-item Test Procedures

A. Acquisition Reform Initiatives Background

The National Performance Review (NPR), which commenced in 1993 (only shortly after the Cold War's demise), explicitly marks the start of an over-a-decade-long push towards greater efficiency and effectiveness of Government operations. The NPR created the ideal of having a Government responsive to all its stakeholders, and its popularity was embraced by the executive branch and legislators alike.

The National Performance Review (1993), in essence, called for the following:

- Greater efficiencies.
- Increased effectiveness.
- A change in business protocol to meet a shrinking work force.
- A shift from purchasing goods to purchasing services.
- The enticement of more business entities to participate in Federal business opportunities.
- The reduction of complex statutory and regulatory systems governing Federal acquisitions.

Dr. Jacques Gansler and many other prominent thinkers recommended the Government adopt “commercial practices.” Jacques Gansler’s mandate for the use of commercial items is provided as Appendix A.

Throughout the years following the NPR, the military and its supporting personnel structures were targeted for reductions in end-strength by the Legislative and Executive Branches, and experienced dramatic personnel reductions. The acquisition community was not spared in this call for restructuring. According to the General Accountability Office, within the past decade the DoD downsized the civilian



acquisition workforce by nearly 50%: from nearly 250,000 employees to less than 124,000.²

During the same timeframe, several notable and respected academics proposed acquisition reform measures with the intent to improve the efficiency and effectiveness of the acquisition process and to gain those same efficiencies which would enable the DoD acquisition workforce to do more with less. Among notable scholars and influential works are: “Remaking Federal Procurement” by Steven Kelman³; from Dr. Jacques S. Gansler, former Under Secretary of Defense (AT&L) now Vice-President for Research at the University of Maryland, *Moving toward Market-based Government*,⁴ “Commercial Pricing,”⁵ and *A vision of the Government as a World-class Buyer: Major Procurement Issues for the Coming Decade*.⁶ Without reservation, this researcher asserts these authors and visionaries have influenced modern thinking in acquisition reform.

Additionally, legislators such as Congressman Tom Davis, representing Virginia’s 11th District and Chairman of the House Committee on Government Reform, have embraced and initiated—through legislative means—reformation of the acquisition process, including the passage of the *Federal Acquisition Streamlining Act* of 1994, the *Federal Acquisition Reform Act* of 1995, and the *Service Acquisition Reform Act* of 2003. All of the Acts (FASA, FARA, and SARA)

² Government Accountability Office, *Department of Defense Plans to Address Workforce Size and Structure Challenges*, April 2002, GAO-02-630: *Acquisition Workforce*.

³ Steven Kelman, “Remaking Federal Procurement,” *Visions of Governance in the 21st Century*, Working Paper #3 (Boston: The JFK School of Government, Harvard University, 2002). Accessed 15 September 2006 from <http://ksghome.harvard.edu/>; Also published in *Public Contracts Law Journal* (Summer 2002).

⁴ Dr. Jacques S. Gansler, *Moving toward Market-based Government: The Changing Role of Government* (College Park: University of Maryland, June 2003).

⁵ Dr. Jacques S. Gansler, “Commercial Pricing,” National Contract Management Association, 1998. Distributed to faculty of the Naval Postgraduate School, June 1988 by the NCMA.

⁶ Dr. Jacques S. Gansler, *A Vision of the Government as a World-class Buyer: Major Procurement Issues for the Coming Decade* (College Park: University of Maryland, January 2002).



created “commercial” buying practices aimed at garnering greater efficiency and effectiveness in the acquisition process, and at eliciting greater participation in Federal acquisitions by non-traditional contractors.

Yet, despite the manifold benefits attained by adopting commercial buying practices, the specific results of legislation and its implementation are not without strong critics. Two noteworthy challengers are Steven L Schooner, Associate Professor of Law at George Washington University School of Law (whose critique was published in an article entitled, “Fear of Oversight: The Fundamental Failure of Businesslike Government”)⁷ and Danielle Brian, Executive Director of the Project on Government Oversight (POGO⁸).

Criticism of the legislated reforms can be summarized as follows: the legislative reforms decrease critical managerial and oversight responsibilities traditionally afforded the Federal contracting officer, thus exposing the contracting officer and the taxpayer to significant risks.

B. Moving towards Commercialization: *FASA* and *FARA*

The *Federal Acquisition Streamlining Act* of 1994 represented the beginning of the legislative acquisition reforms aimed at commercialization.

Among one of its many major provisions was the concept of “commercial item” acquisition. Prior to *FASA*, Federal acquisitions, according to rigid criteria, were subject to myriad laws and regulations—compliance with which was mandatory for contractors participating in Federal procurements.⁹ The plethora of regulatory requirements mandated by the *Federal Acquisition Regulation (FAR)*, along with the

⁷ Steven L. Schooner, *Fear of Oversight: The Fundamental Failure of Business-like Government* (Washington, DC: George Washington University Press, 23 July 2001).

⁸ Project on Government Oversight (POGO) is a non-profit organization at www.pogo.org.

⁹ The range and scope of laws applicable to a specific contract action was, and continues to be, based on acquisition methodology, type of contract vehicle, and the monetary amount of the acquisition.



implementation guidance under the *Defense Federal Acquisition Regulation (DFAR)* and specific agency mandates and regulations, created a “choke hold” on contractors doing business with the Federal Government; these regulations acted as a solid barrier-of-entry for potential non-traditional commercial businesses that could offer much-needed commercial goods and services to the Federal government. Due to the overwhelming legislative and regulatory burdens contractors faced when doing business with the Federal government, many potential contractors refused to conduct business in the Federal arena. Recognizing the dilemma emerging from traditional regulatory-based and constrictive business practices (and the impact these were having on potential and actual participants with the Federal government), the Department of Defense (DoD) contracted a study with the management consulting firm of Coopers and Lybrand to study the impact of the DoD’s acquisition regulations and oversight requirements on its contractors.

In December 1994, Coopers and Lybrand issued its report, which identified over 120 regulatory and statutory cost drivers that, according to the study, increased the price the DoD paid for goods and services by 18%.¹⁰ As an example, contractor compliance with the provisions of the *Truth in Negotiations Act (TINA)* resulted in a 1.3% premium paid by the Government.¹¹ The table below, taken directly from the GAO, highlights the top 10 of over 120 cost drivers which were identified by corporations participating in the study.¹²

¹⁰ Coopers and Lybrand, *The DOD Regulatory Cost Premium: A Quantitative Assessment* (TASC, Inc., December 1994).

¹¹ The *Truth in Negotiations Act (TINA)* is applicable to all negotiated sole-source contracts in excess of \$5,550,000 and requires certified cost or pricing data, certified by an officer of the firm, as to current, accurate, and complete information as of the date of agreement on price. *TINA* allows the Government to hold contractors financially and potentially criminally liable for “defective pricing” if the Government materially based its acceptance and award on the cost and pricing data provided by the contractor.

¹² Government Accountability Office, *Efforts to Reduce the Cost to Manage and Oversee DoD Contracts*, April 1996, GAO/NSIAD-96-106: *Acquisition Reform*.



Table 1. Department of Defense's Top 10 Cost Drivers

Cost driver	Description
DOD quality program requirements	An umbrella military specification (MIL-Q-9858A) requiring contractors to establish quality assurance programs to ensure compliance with contract requirements.
Truth in Negotiations Act	A statute (P.L. 87-653) requiring contractors to justify cost proposals and proposed contract prices with detailed cost or pricing data that must be certified as accurate, complete, and current.
Cost/schedule control system	A requirement that contractors have an integrated management control system to plan and control the execution of cost-reimbursable contracts.
Configuration management requirements	A military standard (MIL-STD-973) for DOD approval of all contractor configuration changes to technical data packages.
Contract-specific requirements	DOD-imposed requirements that are not codified in statutes, regulations, military specifications, or standards.
Defense Contract Audit Agency/Defense Contract Management Command interface	Costs deriving from daily interaction of contractor personnel with auditors from the Defense Contract Audit Agency and quality inspectors and functional experts from the Defense Contract Management Command.
Cost accounting standards	Requirements for ensuring consistent and equitable allocation of costs and for disclosing accounting practices and contractor interpretation of certain standards.
Material management and accounting system	A requirement (DFARS-242.72) for certain contractors to establish and maintain a system that accurately forecasts material usage and ensures that costs of all materials are appropriately allocated to specific contracts.
Engineering drawings	A guideline (MIL-STD-100E) for preparing engineering drawings.
Government property administration	A requirement (FAR part 45) that contractors assume responsibility for maintaining and accounting for government-owned property.

Note: DOD, Department of Defense; MIL-STD, military standard; DFARS, Defense Federal Acquisition Regulation Supplement; FAR, Federal Acquisition Regulation.

Yet, even while the Federal government was experiencing a major downsizing and restructuring, it was inescapably reliant on the commercial



marketplace for goods and services that were once provided by “organic” sources within the Federal (and DoD) structure.

With the prompting of several industry groups, including the Aerospace Industries Association, Federal lawmakers moved quickly to implement the *Federal Acquisition Streamlining Act (FASA—1994)*. This legislation created a preference for “commercial item acquisitions.” *FASA* eliminated many of the statutory and regulatory requirements for “commercial” items. The concept behind commercial-item designation is that the Federal government could structure its buying processes to approximate what industry utilizes in its business-to-business transactions. Specifically, priced-based acquisition, little-to-no audit requirements, and less-intrusive data collection (if any), would be applicable for all commercial-item buys. By statutory definition under *FASA*, commercial items were defined as items that were sold, leased or licensed to the general public. Under this definition, a clear and demonstrable sales track-record to the general public could be used as the basis for Government contracting officers to make their *FAR*-mandated determination of “fair and reasonable” price pursuant to, and as a condition of, contract award.¹³

What is noteworthy is that the *Federal Acquisition Regulation (FAR) Part 12*, “Acquisition of Commercial Items,” was created to comply with the new commercial-based legislation and effectively relieves contractors of many of the myriad laws and regulations to which they might otherwise be subject.

With industry lauding the *FASA* 1994 legislation, lawmakers quickly capitalized on the well-received commercial-item provisions. One year after the

¹³ *FAR Part 12*: “While the contracting officer must establish price reasonableness in accordance with 13.106-3, 14.408-2, or Subpart 15.4, as applicable, the contracting officer should be aware of customary commercial terms and conditions when pricing commercial items. Commercial item prices are affected by factors that include, but are not limited to, speed of delivery, length and extent of warranty, limitations of seller's liability, quantities ordered, length of the performance period, and specific performance requirements. The contracting officer must ensure that contract terms, conditions, and prices are commensurate with the Government's need.”



passage of *FASA*, new legislation was proposed which, in addition to numerous other provisions, expanded the definition of “commercial item” to allow for even greater participation in Federal acquisitions from non-traditional firms; likewise, these provisions further reduced the burden of complex and costly statutory requirements originally identified by the Coopers and Lybrand study. The new legislation, the *Federal Acquisition Reform Act* of 1995, expanded the definition of “commercial item” to include not only items that were sold, leased, or licensed to the general public, but any items that were *offered* for sale, lease, or license to the general public. Additionally, the definition was broadened to consist of items which have evolved from commercial items; this change now includes commercial items modified for Government use, commercial items and services combined for the Government requirement, non-developmental items, and services at catalog or market price.

Table 2. *Federal Acquisition Streamlining Act (FASA 1994) Highlights*¹⁴

<ul style="list-style-type: none"> ▪ Created preference for “commercial item” acquisition.
<ul style="list-style-type: none"> ▪ Provided for utilization of “less intrusive” data sources in determining “fair and reasonable” price pursuant to contract award; eliminated <i>TINA</i> requirements.
<ul style="list-style-type: none"> ▪ Created a “broad” definition of “commercial item” to allow for maximum applicability of the legislative and regulatory relief under the provision.
<ul style="list-style-type: none"> ▪ Created “best practice” business processes similar to commercial business-to-business standards.
<ul style="list-style-type: none"> ▪ Maximized reliance on industry and market forces to establish “fair and reasonable” pricing.

Specific provisions of the *Federal Acquisition Reform Act (FARA 1995)* allowed for the utilization of Simplified Acquisition Procedures (SAP) for commercial-

¹⁴ Table developed by researcher from information derived from the *FASA 1994*.



item goods and services up to and including \$5.5 million dollars. Other highlights of *FARA* are provided in Table 3 below.

Table 3. *Federal Acquisition Reform Act (FARA 1995) Highlights*¹⁵

Expanded definition of “commercial item” and its applicability to include: <ul style="list-style-type: none">• items which have evolved from commercial items• items that are commercial with modifications to meet Government-unique requirements• combinations of commercial items and services for Government use• non-developmental items (NDI—items originally developed and/or sourced by a Government agency)• services at catalog or market prices
Prohibited the use of certified cost and pricing data under <i>TINA</i> for commercial items.
Allows the utilization of Simplified Acquisition Procedures (SAP) to purchase commercial goods and services worth up to \$5.5 million.

The “one-two” punch of *FASA* and *FARA* dramatically changed the business-process operations of acquisitions for those items falling within the definition of “commercial item.” Over 100 statutes and regulations are no longer applicable for commercial-item buys, including *TINA*.

¹⁵ Table developed by researcher from information derived from the *FARA 1995*.



C. Definition of Commercial Item—Broad Impact

Understanding the definition of “commercial item” is imperative for purposes of this study. The *Federal Acquisition Regulation—FAR Part 2*—defines the aforementioned as follows (original wording intact):

“Commercial item” means—

- (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—
 - (i) Has been sold, leased, or licensed to the general public; or,
 - (ii) Has been offered for sale, lease, or license to the general public;
- (2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
- (3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for—
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
- (4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type



customarily combined and sold in combination to the general public;

- (5) Installation services, maintenance services, repair services, training services, and other services if—
 - (i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
 - (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed or a specific outcome to be achieved. For purposes of these services—
 - (i) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (ii) “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
- (7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or



- (8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

The *FAR* definition clearly and purposefully is broadly worded to include both goods and services. The criteria utilized to determine whether a good or service meets the definition for commerciality can and should be interpreted in the broadest context possible, especially for purchase actions which are possible candidates for the *FAR* 13.5 Test Program. According to the researcher and Dr. Jacques Gansler, every requirement under \$5.5 million should be treated as a commercial good or service unless proven otherwise.¹⁶ This premise is particularly important for field contracting activities such as the Fleet and Industrial Supply Center contracting operations, whose contracting awards are made predominantly to commercial businesses offering products or services meeting the broad definition.

D. Broad Commercial-item Definition Designed to Elicit Maximum Utilization.

While it's logical to cite *FAR Part 12*, "Acquisition of Commercial Items," in any discussion of commercial-item acquisitions, *FAR Part 13* actually provides the regulatory framework for those acquisitions meeting the definition criteria of commercial item. Again, that definition encompasses all the basic elements indicated in the table below:

¹⁶ Jacques Gansler, phone conversation with the author, E. Cory Yoder, January 2006.



Table 4. Commercial-item Definition Criteria¹⁷

A commercial item is one that is customarily used for non-governmental purposes.

Items must have been:

- Sold
- Leased, or
- Licensed

to the general public, **or**

Items that have been **offered** for:

- Sale
- Lease, or
- License

to the general public.

Additionally, the definition may include items which have evolved from a commercial item, according to the elements in the table below:

Table 5. Additional Elements Defining Commercial Items¹⁸

Commercial Items may include:

- Items which have evolved from commercial items
- Items that are commercial with modifications for Government use
- Combinations of goods and services
- “Non-Developmental” items
- Services at catalog or market prices

¹⁷ Table developed by researcher from information derived from the *FAR Parts 12 and 15, Commercial Item Acquisitions*, originally sourced July 2004, and re-evaluated for this paper January 2007.

¹⁸ Ibid.



E. Advent of *FAR Subpart 13.5* Test Program for Certain Commercial Items:

Capitalizing on the aforementioned legislative initiatives, the *Federal Acquisition Regulation* captures the *FARA* legislative provision to allow utilization of Simplified Acquisition Procedures up to and including \$5.5 million.

The *Federal Acquisition Regulation (FAR Part 13.5)* is quite simple in its language and intent. *FAR 13.5* states verbatim (format and numbering system of the *FAR* retained herein, including any sentence fragments of the regulatory language; however, bold and italic emphasis is added to the “purpose” element):

13.500 General.

- (a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5.5 million (\$11 million for acquisitions as described in 13.500(e)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The ***purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).***
- (b) For the period of this test, contracting activities must employ the simplified procedures authorized by the test to the ***maximum extent practicable.***
- (c) When acquiring commercial items using the procedures in this part, the requirements of Part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses in Subpart 12.3.



- (d) The authority to issue solicitations under this subpart expires on January 1, 2008. Contracting officers may award contracts after the expiration of this authority for solicitations issued before the expiration of the authority.
- (e) Under 41 U.S.C. 428a, the simplified acquisition procedures authorized by this test program may be used for acquisitions that do not exceed \$10 million when—
 - (1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack; or
 - (2) The acquisition will be treated as an acquisition of commercial items in accordance with 12.102(f)(1).

Special documentation requirements for the Test Item protocol are also contained in *FAR 13.5*, specifically, under *FAR 13.501*.

13.501 Special documentation requirements.

- (a) Sole source acquisitions.
 - (1) Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in Part 6. However, contracting officers must—
 - (i) Conduct sole source acquisitions, as defined in 2.101, under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (a)(2) of this section; and
 - (ii) Prepare sole source justifications using the format at 6.303-2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996) or the authority of the Services Acquisition Reform Act of 2003 (41 U.S.C. 428a).



- (2) Justifications and approvals are required under this subpart only for sole source acquisitions.
- (i) For a proposed contract exceeding \$100,000, but not exceeding \$5,500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.
 - (ii) For a proposed contract exceeding \$5,500,000, but not exceeding \$10,000,000, the competition advocate for the procuring activity, designated pursuant to 6.501; or an official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.
 - (iii) For a proposed contract exceeding \$10,000,000 but not exceeding \$5,500,000 or, for DoD, NASA, and the Coast Guard, not exceeding \$75,000,000, the head of the procuring activity or the official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.
 - (iv) For a proposed contract exceeding \$5,500,000 or, for DoD, NASA, and the Coast Guard, \$75,000,000, the official described in 6.304(a)(4) must approve the justification and approval. This authority is not delegable except as provided in 6.304(a)(4).
- (b) *Contract file documentation.* The contract file must include—
- (1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR Subpart 13.5 were used;
 - (2) The number of offers received;



- (3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and
- (4) Any justification approved under paragraph (a) of this section.

F. Simplified Acquisition Procedures (SAP) to Purchase ALL Commercial Goods and Services up to, and Including \$5.5 million!

The basic premise is that whatever protocols and business practices for Simplified Acquisition Procedures (SAP) under the “traditional” \$100-thousand threshold prior to the advent of *FAR 13.5* can now be applied to all *qualifying* actions up to and including \$5.5 million under the *FAR 13.5* test threshold. The implications and potential impacts are discussed in the following chapters.

G. Implications and Potential Impact of *FAR 13.5* Provisions on Protocols, Practices and Performance

Clearly, the *FAR 13.5* language presented in the previous chapter captures the minimalist design of the legislative intent of *FARA* and *FASA* on which it is based. What constitutes *qualifying* under the *FAR 13.5* protocol is a critical and key distinction that is specifically addressed later within this text. Dr. Jacques Gansler and many other prominent thinkers recommended the Government adopt “commercial practices.” Those recommendations gained prominence and took hold through the *FARA* and *FASA* legislation.

As indicated earlier in this discussion, the **National Performance Review** (1993), and subsequent ***FARA*** and ***FASA*** legislation, in essence, called for the following:

- Greater efficiencies.
- Increased effectiveness.
- A change in business protocol to meet a shrinking work force.



- A shift from purchasing goods to purchasing services.
- The enticement of more business entities to participate in Federal business opportunities.
- The reduction of complex statutory and regulatory systems governing Federal acquisitions.

The potential **impact of the FAR 13.5 provision is immeasurable** and warrants specific and detailed discourse to help acquisition personnel, researchers and legislators fully appreciate the magnitude of the potential impacts it can have on organizational behavior and performance.

H. Greater Efficiencies & Effectiveness

The increases in efficiency derived from *FAR 13.5* can be measured in several key ways. However, the researcher cannot overemphasize that the true impact of *FAR 13.5* cannot be realized without utilizing the “traditional” SAP purchase protocol (heretofore at the \$100K threshold) as the basic business protocol and procedure map for purchases up to and including \$5.5 million. The protocol is *the* critical element, as adopting the traditional SAP protocol is necessary for achieving the vision of the legislation—according to the researcher and as supported by John Brosnan and Jacques Gansler. How does the SAP protocol create greater efficiency and effectiveness, and what does this increased capability mean to business?

First, the premise of SAP is to keep the amount of administrative paperwork, documentation, and procedure to an absolute minimum. For example, acquisition plans, if present at all, are in a simple POA&M (Plan of Action and Milestone) format: specific actions, due dates, etc. There is no formal acquisition plan. In many SAP cases, the acquisition plan can be eliminated in its entirety.

Second, “fair and reasonableness” pricing as a required precursor to award is determined by utilizing competitive forces of the commercial market place. And, when these competitive forces are present, the contract file need only demonstrate



the competitive field at play on the immediate contract. This can be satisfied quite easily in commercial market buys. In essence, the *FAR* states that competition exists if: 1) two or more offerors responded to the solicitation (or there existed a notion or condition wherein a participating respondent believed there was more than one offeror contending for award); 2) the offeror(s) were responsive to the requirements of the solicitation; 3) the offeror contended independently from other offerors; 4) the solicitation and award criteria utilized price and price-related factors as the basis for award decision. In commercial SAP buys, the criteria mentioned above are nearly universally present, and as such, the award determination can be made expediently.

Given the aforementioned, if the requirement is a bona-fide sole-source action, a streamlined Justification and Approval (J&A) (for action other than full and open competition) can easily be processed, and the *FAR* 13.5 procedures can still be applied.

I. *FAR* 13.5 Transaction “Touch Time” and Transaction Cost Reductions

Managing purchase actions with *FAR* 13.5 streamlined protocols and processes to conduct the construct, solicitation, and award of the purchase results in ***dramatically less “touch time” and an associated reduction in transaction costs***. According to CAPT Steve Shapro, NAVSUP Code 02, the reduction in actual touch time required to process a SAP buy versus buys using traditional large-contract methods is significant. CAPT Shapro indicates that a recent review of protocols revealed over a ***90% reduction*** in processing touch time when SAP protocol was used. Specifically, contract actions using SAP protocol have approximately **9 hours** total touch time, while those just using large-contracting procedures have approximately **200 hours** of touch time.¹⁹ By extrapolating this

¹⁹ CAPT Steve Shapro, NAVSUP Code 02. Cited with permission from discussion with the author conducted at NPS on 2 November 2006.



time savings into monetary savings, the researcher discovered that for each transaction that utilizes the *FAR 13.5* provisions instead of traditional “large” protocol, there’s an **average cost reduction of over \$9,500 per transaction!**²⁰ And, approximately 90% of FISC’s 65,000 annual contract action transactions are below the *FAR 13.5* Test Procedure’s \$5.5 million threshold!

The potential impact of full utilization of the *FAR 13.5* protocol is obvious, given the virtual universal applicability to actions less than \$5.5 million.

J. Chapter Conclusion

Both industry and the Government needed new acquisition initiatives which would allow for greater effectiveness and efficiencies in providing contract support to the public sector. Personnel reductions and concurrent calls for greater savings and improved customer support didn’t go unheard by Congress and Federal regulators. The *FAR 13.5* Test procedures are in direct response to demands from process stakeholders demanding greater efficiencies and effectiveness. The savings in time and money from utilizing the *FAR 13.5* protocols are significant, to say the least.

The following chapters will examine and analyze: 1) FISCs’ reported utilization of *FAR 13.5* provisions; 2) FISCs’ established protocols and processes for utilization of the established *FAR 13.5* provisions. Finally, the research will conclude with specific recommendations.²¹

²⁰ Note: this is derived by applying an average loaded hourly salary rate for an 1102 Contract Specialist of \$50, times the number of hours for large contract protocol touch time (200 hours) and subtracting the average loaded hourly salary rate times the number of touch-time hours for an 1102 Contract Specialist conducting a purchase using SAP protocols.

²¹ Note: Supplementary information utilized as the basis for the research above is provided as Appendices B through G. These readings represent implementation guidance of the *FAR 13.5* Test Program.



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III. DD Form 350 Data Review

A. Introduction

The objectives of this chapter are first, to explain the usefulness of the Department of Defense's Individual Contracting Action Reports (DD Form 350) and second, to draw conclusions from the data pertaining to the SAP Commercial-item Test Program (*FAR 13.5*). Although simplified acquisition procedures have been around for years, their carryover success to the new Test Program's dollar range is by no means a foregone conclusion. Through the use of this data, the project aims to discover the extent to which the new SAPs are being utilized. The research will first examine the Naval Supply System Command's (NAVSUP) contracting offices as a whole and then look to FISCSD contracting activities specifically.

B. NAVSUP's Total Expenditure Profile Generated from DD350 Reporting

The total number of actions and spending is a significant portion of the total Navy procurement profile. According to Steve Shapro, NAVSUP Code 02, although the major systems commands have large-dollar, large-visibility actions, NAVSUP and the FISCs manage a significant portion of the actions and total dollars spent. The figures below highlight the magnitude of the operation.



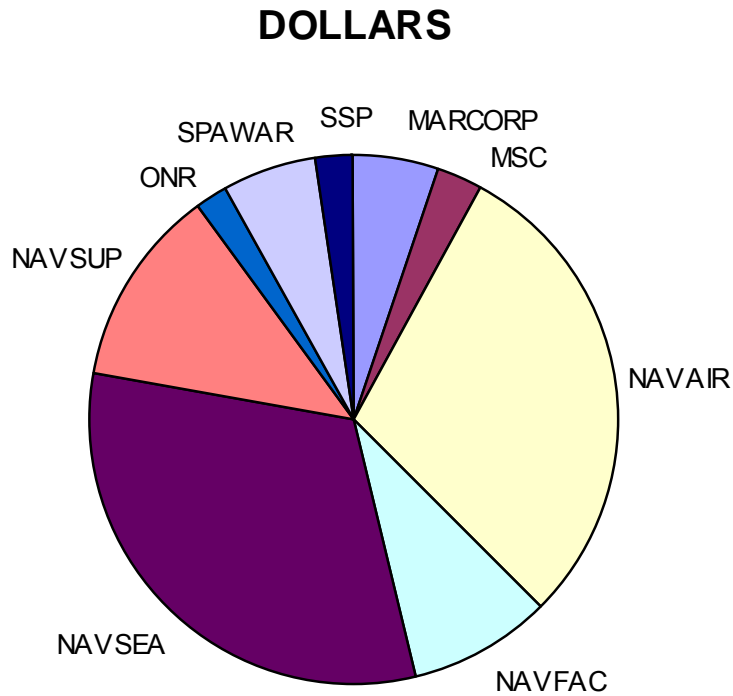


Figure 1. Dollars Spent

Figure 1 (above) indicates the total dollars spent, while Figure 2 provides the total number of actions or transactions. Comparatively, NAVSUP accounts for a major portion of the actions conducted.



ACTIONS

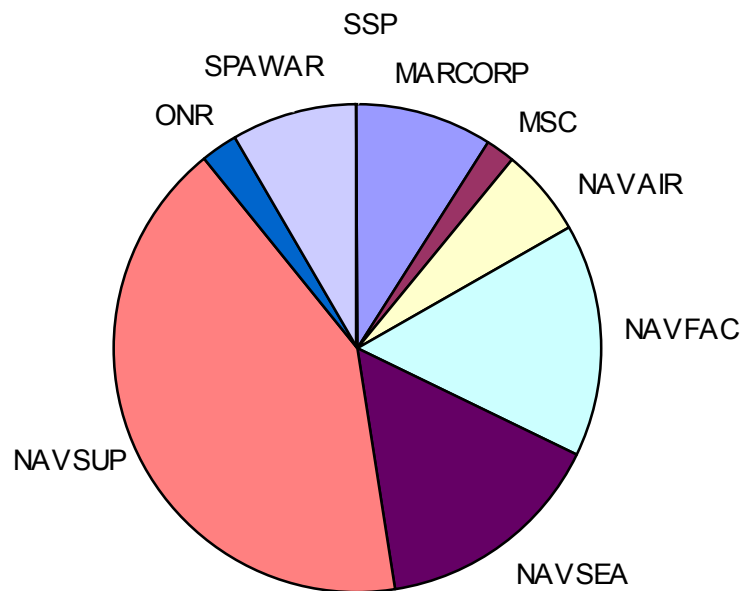


Figure 2. Total Number of Transactions

The importance of the total transaction volume, not just the monetary volume, is critical in order to understand the importance of the DD350 reporting and what the data can and cannot tell us about the operations.

First, the DD350 data reporting **can** provide myriad information critical for analysis. Second, the DD350 data includes reporting for the *FAR 13.5* Test Procedures specifically under analysis for this research.

However, the DD350 reporting system has several shortcomings that may limit the usefulness of the data. The limitations of the DD350 data reporting system are well known to the researcher—both from close examination of the data fields and potential reporting anomalies—and such limitations are clearly highlighted within



this report.²² Among the findings is the problem that the DD350 and Federal Procurement Data System reporting were subject to database-entry inaccuracies; therefore, the GAO determined the full benefits of the *FAR 13.5* test procedure benefits could not be fully determined due to this missing data. The GAO recommended that the DoD and the Office of Federal Procurement Policy (OFPP) develop evaluation mechanisms for better measuring the test program benefits. Appendix H provides the entire GAO report cited herein for perusal by interested readers.

The researcher also contends that the DD350 data may indicate only that a buyer claims that the *FAR 13.5* test procedures were utilized, not the extent or quality of the efficiencies and effectiveness of the utilization. Thus, it is impossible to know if the actual protocols required to garner the efficiencies and effectiveness of the *FAR 13.5* were even utilized. The extent of this limitation in reporting is explored in this, and later, chapters.

C. DD Form 350 Reporting

For fifteen-plus years, all levels of Government oversight have utilized contracting action reports (DD Form 350) for data collection and analysis as an effective monitoring tool of contracting offices throughout the Department of Defense. The Government Accountability Office (GAO) has, on numerous reports to Congress, cited 350 data as the basis of its analysis and findings. The forms are submitted by all defense-agency contracting offices on every contract action in excess of the micro-purchase threshold (\$2,500) and are required to be reported within 30 days after the date the contract was awarded.²³ With the implementation of

²² Appendix H. GAO Report, *Contract Management, No Reliable Data to Measure Benefits of the Simplified Acquisition Test Program*, September 2003, GAO-03-1068.

²³ Office of the Under Secretary of Defense (AT&L), *Defense Federal Acquisition Regulation Supplement (DFARS)*, 1998. *DFARS Part 204.670, Defense Contract Action Data System*, is the reference for all reporting requirements of the DD Form 350, Individual Contracting Action Report.



the Commercial-item Test Program to the *FAR* in 1998, new fields were added to capture that program's pertinent information.

The DD Form 350 data utilized in this project originated from NAVSUP Headquarters' Policy Division and covered all contract buys from Fiscal Years 2001 through 2005. It was consolidated into five Excel spreadsheets on 17 July 2006 and consisted predominantly of all contracting actions done under NAVSUP's control, i.e., FISCs (Fleet and Industrial Supply Centers), ICPs (Inventory Control Points), NRCCs (Naval Regional Contracting Centers), and other smaller contracting satellites. While the information found in NAVSUP's database is treated entirely as primary data for this project, it must be acknowledged that the Department of the Navy (DON) has found itself lacking in its effective use of the form. The issue is brought up here for clarity purposes, but moreover to point out the DON's emphasis is on the program's effective execution and the Navy's concern for its successful use and continuation. A NAVSUP policy letter dated 8 February 1999 asserted that the DON had been weak up to that point in its implementation of the Simplified Acquisition Procedure's Test Program and its associated data recording on the form. "NAVSUP Policy letter SA98-19 provided DON guidance on the use of the Commercial Test Program and requested that DON activities use the authorized procedures to the maximum extent practicable."²⁴ More recently, in a 4 April 2005 letter, NAVSUP again pointed to miscoding problems of the DD Form 350 with regards to the Test Program and warned that unless corrected, it, "may potentially lead to Congressional termination of the program."²⁵ For this project's purposes, the sometimes inconsistent usage does not pose a policy examination problem per se—as our findings will be based on the same data used by higher authority decision-makers examining the Test Program's effectiveness in the acquisition community.

²⁴ NAVSUP, *DON POLICIES FOR THE USE OF THE COMMERCIAL ITEM TEST AT FAR 13.5*, 8 February 1999, NAVSUP Policy Letter SA99-11.

²⁵ NAVSUP, *EXTENSION OF TEST PROGRAM USING SAP FOR CERTAIN COMMERCIAL ITEMS*, 4 April 2005, NAVSUP Policy Letter SA05/04.



The DD Form 350 data acquired for this research is the project team's primary database and appears to be a fair representation of FISC contracting activities. Analyses of the information contained therein will provide the following:

1. The principle means of determining the extent to which the Navy's FISC contracting activities are utilizing the Commercial-item Test Program under SAP.
2. The capability to validate that FISC San Diego's (FISCSD) contracting activities are reflective of NAVSUP's policies and practices in the aggregate.
3. A collection of contracts to examine for comparative analysis. The project looked both at the database as a whole for observable trends and at a sampling pulled from FISCSD for making other material observations.

D. Isolating *FAR 13.5* Transactions

The DD Form 350 currently contains 109 data fields that delineate nearly every feature of a contract.²⁶ Hierarchically designed, the form is segmented into eight parts (Table 6) and captures the actions taken by each and every buyer in the field.

²⁶ Office of the Under Secretary of Defense (AT&L), *Defense Contract Action Data System, DFARS Part 204.670*.



Table 6. DD Form 350, Parts Breakdown

Part	Description	Data Examples
A	Identifies the reporting activity	Military Component, Contracting Office...
B	Describes the transaction	Contract Number, Action Dates, Contractor's Name & Address, Amount Obligated, Description of Procurement, Contract or Order (definite delivery, order under Federal Schedule or mandatory sources such as UNICOR and JWOD)
C	Gathers data concerning contracting procedures: use of competition, financing, and statutory requirements other than socioeconomic	Extent Competed, Type of Contract (firm-fixed-price, cost-plus-incentive-fee, labor-hour...), Solicitation Procedures, Commerciality
D	Demographic characteristics of RDT&E Actions	Small business, Minority institutions, Foreign entities...
E	Selected Socioeconomic Statistics	Type of Contractor (small business, women or minority owned...) Demographics, Size Classification, Disadvantaged Status
F	Simplified Acquisition Procedures Ranges	Sum of Lines B3a, B4a, B5a, B6a, and B7a
G	Contingency Actions	Contingency, Humanitarian, or Peacekeeping Operations
H	Remarks and Authentication	Remarks, Contracting Officer's name

Because this project is an attempt to look specifically within the Commercial-item Test Program section of the larger Simplified Acquisition Contracting Procedures, we narrowed our fields of interest on the form (Table 7) to those that had a direct bearing on a buyer's decision to either utilize *FAR 13.5* guidance or not. The chief field of interest for SAP purposes on the form is line number B14, *Competition in Contracting Act (CICA)* applicability. The entry there indicates whether the buying agent was required to compete the contract within the "full and



open” framework of the *Competition in Contracting Act* of 1984 or utilized some form of SAP to make the buy. If the field is coded “D,” then the buyer specifically used “procedures pursuant to *FAR Subpart 13.5*” and effectively isolated all test program contract employment within the database. The remaining fields chosen to be kept were either used to identify what was contracted or to help determine why other than *FAR 13.5* procedures were determined necessary.

Table 7. DD Form 350, Line Numbers of Interest

Line	Title/Description
A4	NAME OF CONTRACTING OFFICE
B1A	CONTRACT NUMBER
B2A	ORDER OR OTHER ID NUMBER
B2B	MODIFICATION NUMBER
B3	ACTION DATE
B5D	CONTRACTOR NAME AND DIVISION NAME
B8	OBLIGATED OR DEOBLIGATED DOLLARS
B12A	FEDERAL SUPPLY CLASS OR SERVICE CODE
B12E	NAME OR DESCRIPTION
B13A	CONTRACT OR ORDER
B14	CICA APPLICABILITY
C3	EXTENT COMPETED
C5	TYPE OF CONTRACT
C6	NUMBER OF OFFERS SOLICITED
C7	NUMBER OF OFFERS RECEIVED

One significant factor of the 350 data the researchers chose not to examine was that of customer cycle-time. While the reports do post a start and completion time for each contract, researchers garnered from FISCSD personnel that this aspect of the form is subject to neglect and possible abuse. It is neglected because



the reports are routinely not filled out until some time after the contracts have been completed and are usually completed by a third-party data clerk. Consequently, the dates used are driven by those on the contract award itself, instead of when the customer actually initiated the purchase process with the agency. Because customer cycle-time is one of the key metrics contracting offices report to higher authorities, it is subject to abuse. While it was not this project's purpose to find fault with any agency's reporting accuracy, we determined that a better solution for finding cycle-time data was through record samplings and policy procedures of the agency in question. Dollar-value ranges were another concern for us as the Test Program's thresholds were fenced, at the time the research data was collected, between \$100K and \$5M. In order to maintain the data for comparative analysis, research here is constrained to those same figures. It is also noteworthy to mention here that when examining the data, observers should note that all dollar values are expressed as then-year amounts and are not adjusted for inflation.

E. NAVSUP Data Review

With research parameters set, data mining efforts preceded to filter the information gathered in terms of: 1) types of acquisitions, 2) number of contract actions performed (Count), and 3) their associated dollar figures. For reference purposes, average and maximum dollar values for each category are also included in the Table 8. Since the primary focus, sampling, and policy reviews were based on only one contracting activity, FISCSD, it was necessary to ensure that findings there were indeed reflective of NAVSUP's contracting policies and offices in the aggregate. The research team, therefore, investigated the entire database first before turning to San Diego's data specifically. In this way, this discussion can: 1) illustrate what is going on in the NAVSUP contracting world with regards to SAPs and 2) establish a frame of reference for comparative analyses to follow.

Table 8 and Figure 3 that follow contain all of NAVSUP's contracting activities for Fiscal Years 2001 through 2005. Acquisition types are segmented into four categories: two of which fall outside and two inside Simplified Acquisition



Procedures. The Non-SAP figures are derived by filtering out all acquisitions from line-item B13A of the DD Form 350 that were coded “9”—indicating that a contract was awarded using SAP. This filtering left only acquisitions made using some form of contract or order other than SAP (Definite and Indefinite Delivery Contracts, Order under Federal Schedule, etc.). To better represent where contracting workloads are concentrated with regards to Non-SAP procurements, the researcher determined it additionally prudent to separate purchases made in support of the Navy and Marine Corps Intranet (NMCI) through the Electronic Data Systems Corporation (EDS). Aside from the initial base issuance of the NMCI contract, all subsequent EDS purchases are automated, and cycle-times for each are extremely fast. Because NMCI buys make up such a large percentage of all the Non-SAP contracting dollars obligated, and the number of modifications issued against that one contract are so numerous, their values tend to skew Non-SAP workload metrics considerably. With the breakouts, observations about the actual state of affairs of Non-SAP contracting activity can be more easily distinguished. For the SAP categories, the previously mentioned filtering of line-item B14 produces all acquisitions either made utilizing the test-program procedure (*FAR 13.5*) or some other form of SAP. Significant observations that can be readily drawn from the data include:

1. Non-SAP or large contracting expenditure deltas across the periods are significant. While no definitive explanations for this are readily apparent, Fleet build-up and increased funds due to the onset of the Global War on Terror (GWOT) may be contributing factors.
2. The average value of SAP contracts employed for the period (~ \$300K) were expectantly less than their Non-SAP counterparts (~\$450K); but with a few large contract exceptions, the Test Program was never really utilized to its full \$5M potential.
3. Averaging around \$137 million in annual expenditures, the Test Program did not experience the same growth rate as the other acquisition types for the period.



Table 8. NAVSUP Total Acquisitions (2001-2005)

Fiscal Year	Data	Acquisition Types				Total Acquisitions
		EDS (Non-SAP)	Non-SAP Other	SAP Other	SAP FAR 13.5	
FY01						
	Sum	\$ (26,088,161)	\$ 310,738,216	\$ 1,912,910	\$ 95,692,765	\$ 382,255,730
	Count	186	689	12	344	1,231
	Average	(140,259)	450,999	159,409	278,177	310,525
	Max	3,334,301	4,826,000	400,470	2,996,296	4,826,000
FY02						
	Sum	\$ 96,428,462	\$ 1,009,953,741	\$ 8,328,823	\$ 129,959,601	\$ 1,244,670,627
	Count	475	2,462	52	439	3,428
	Average	203,007	410,217	160,170	296,036	363,089
	Max	4,808,396	5,000,000	481,325	4,658,580	5,000,000
FY03						
	Sum	\$ 270,003,466	\$ 914,602,593	\$ 62,716,696	\$ 146,165,546	\$ 1,393,488,301
	Count	1,401	2,210	181	474	4,266
	Average	192,722	413,847	346,501	308,366	326,650
	Max	4,966,002	5,000,000	3,368,000	4,600,000	5,000,000
FY04						
	Sum	\$ 631,833,153	\$ 345,438,150	\$ 61,876,055	\$ 127,608,235	\$ 1,166,755,593
	Count	1700	666	168	429	2,963
	Average	371,667	518,676	368,310	297,455	393,775
	Max	4,562,888	1,975,110	4,979,117	4,577,835	4,979,117
FY05						
	Sum	\$ 574,010,523	\$ 488,186,113	\$ 106,313,453	\$ 145,428,338	\$ 1,313,938,427
	Count	1,543	1,499	428	492	3,962
	Average	372,009	325,675	248,396	295,586	331,635
	Max	4,646,640	5,000,000	4,781,256	3,378,336	5,000,000



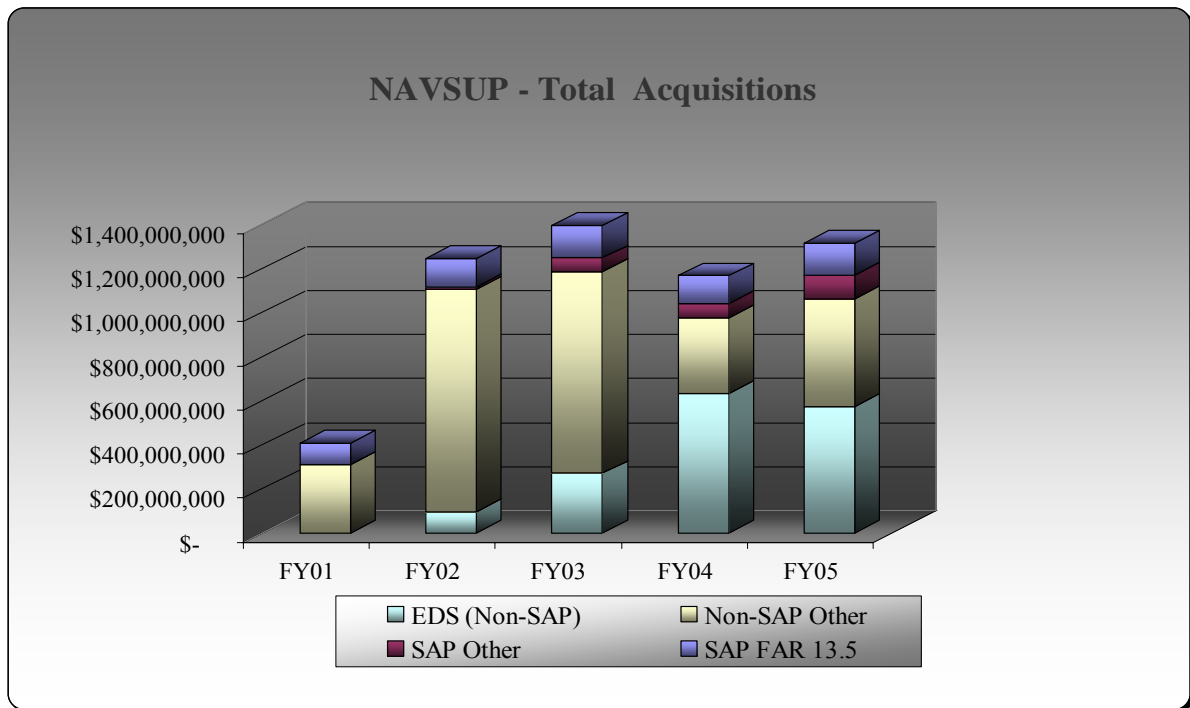


Figure 3. NAVSUP Total Acquisitions (2001-2005)

Isolating Test Program dollars as a percentage of all acquisitions, Figure 4 below depicts a downward-sloping trend in usage. While this segment of research may exhibit a negative implication on the DON's usage of the program, it should be countered, in large part, with the heightened expenditure rates of other programs in support of the GWOT.



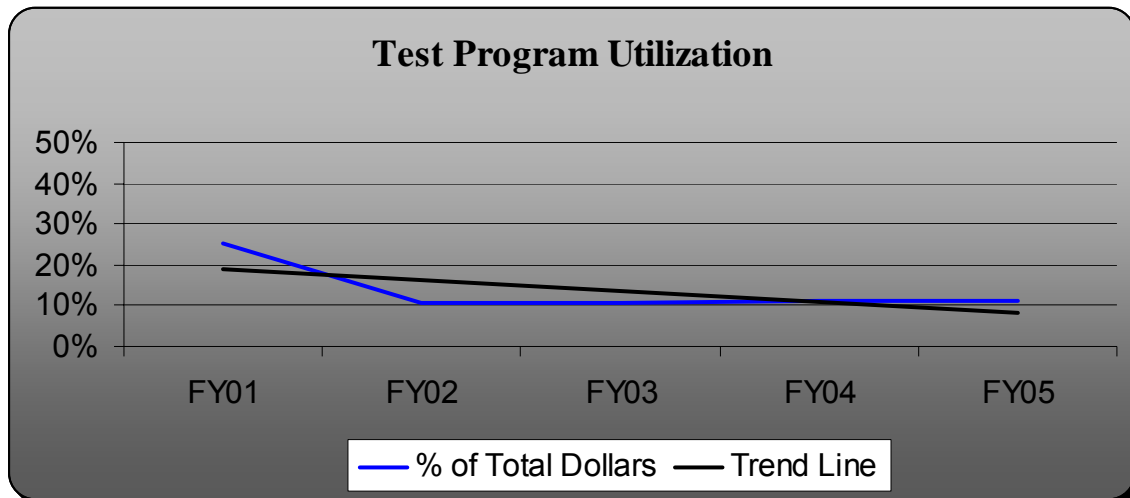


Figure 4. NAVSUP Test-program Utilization Percentages

Although Table 8 and Figures 3 and 4 all provide accurate depictions of the amount of money being spent and the acquisitions categories to which dollars are being obligated, they also paint a poor picture of the workload levels experienced by contracting office personnel. Since that concern is of a higher importance to the project than categorizations, a more comprehensive investigation into the data was required to make such observations.

Workload observations are more accurately perceived through the removal from the database of all acquisition activities that are considered follow-on actions to the original or “Base Contracts.” By removing these additional orders and modifications, the need for the EDS (Non-SAP) acquisition type was eliminated. For reference purposes, Table 9 to follow does provide monetary figures; but its significant worth lies in its acquisition “Count” values. Instead of making observations in terms of dollars spent, this section of findings will represent the number of contracts issued as a better depiction of work being performed in the contracting offices under NAVSUP’s governance. Observations from Table 9 and Figure 5 include:



1. A considerable portion of the total dollar amounts spent at NAVUP activities significantly decrease when additional orders of and modifications to base contracts are removed.
2. Changes in the amount of contracts issued remained greater during Fiscal Years 2002 and 2003. The increases are most likely attributable to operational support for the Global War on Terror.
3. Most of the variability in contract actions, even when examining workload data, is still related largely to Non-SAP procurements.
4. SAP Other acquisitions activity nearly tripled over the last reported period. It is surmised that recent utilization of more automated contract buys through the use of e-commerce initiatives (such as e-portal for service contracts) account for much of this growth.
5. When compared to Table 6, Test Program contracts experienced a far less significant drop in values. This observation leads to the conclusion that Test Program purchases are predominantly made as one-time buys—unlike other acquisition types, which have far more repeat orders and modifications.
6. Test Program figures remained very stable throughout the research period—averaging around 375 actions per year.



Table 9. NAVSUP Base Contracts (2001-2005)

Fiscal Year	Data	Acquisition Types			Total Acquisitions
		Non-SAP	SAP Other	SAP FAR 13.5	
FY01					
	Sum	\$ 164,408,492	\$ 1,912,910	\$ 94,913,479	\$ 261,234,881
	Count	382	12	325	719
	Average	430,389	159,409	292,041	363,331
	Max	3,974,856	400,470	2,996,296	3,974,856
FY02					
	Sum	\$ 395,071,632	\$ 7,892,190	\$ 122,125,782	\$ 525,089,604
	Count	963	49	386	1,398
	Average	410,251	161,065	316,388	375,601
	Max	4,467,528	481,325	4,658,580	4,658,580
FY03					
	Sum	\$ 385,864,476	\$ 32,488,196	\$ 135,202,435	\$ 553,555,107
	Count	969	120	421	1,510
	Average	398,209	270,735	321,146	366,593
	Max	4,710,169	3,368,000	4,600,000	4,710,169
FY04					
	Sum	\$ 202,656,056	\$ 29,252,165	\$ 119,952,276	\$ 351,860,497
	Count	359	96	389	844
	Average	564,502	304,710	308,361	416,896
	Max	4,975,110	4,490,257	4,577,835	4,975,110
FY05					
	Sum	\$ 253,076,712	\$ 92,584,278	\$ 129,438,783	\$ 475,099,773
	Count	630	298	358	1,286
	Average	401,709	310,685	361,561	369,440
	Max	4,602,725	4,781,256	3,378,336	4,781,256



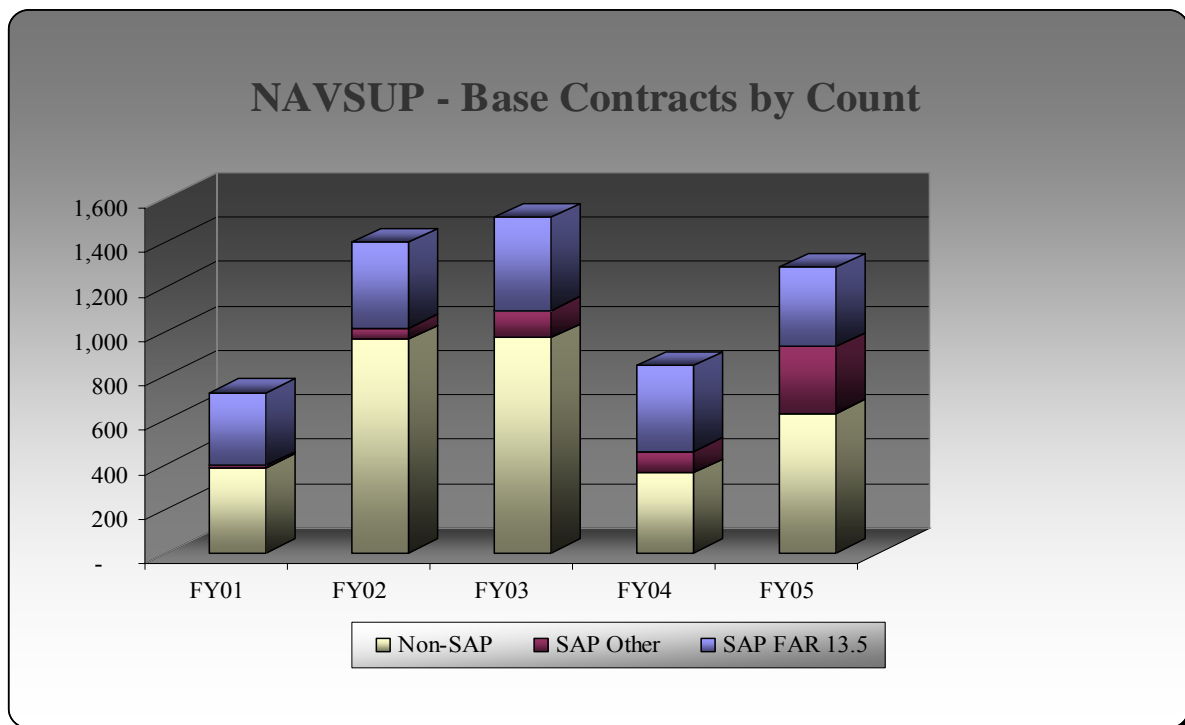


Figure 5. NAVSUP Base Contracts by Count (2001-2005)

Utilizing Figure 5 as a frame of reference, the next three figures are aimed at exploring workload level experienced throughout NAVSUP for the period. By expressing the data as percentages of total acquisitions over time in conjunction with trend lines, several patterns become apparent:

1. The production of Non-SAP contracts are trending downward but look to remain in the neighborhood of half of all acquisition workloads throughout NAVSUP's contracting offices.
2. SAP Other acquisitions are experiencing the most dramatic changes in workload percentages. This is a positive trend in contract efficiency.
3. Test-program utilization is being reported at a healthy 35% of all NAVSUP contracts constructed. While this figure will send a positive message to policy makers, this finding is severely limited in its ability to comment on actual performance savings.
4. A comparison of the three figures together indicates that SAP programs are an indispensable portion of NAVSUP contracting—at nearly 50%. They also signify that the Test Program's utilization is not



so much competing with Non-SAP acquisitions but rather against other streamlined acquisition methods being introduced into the system.

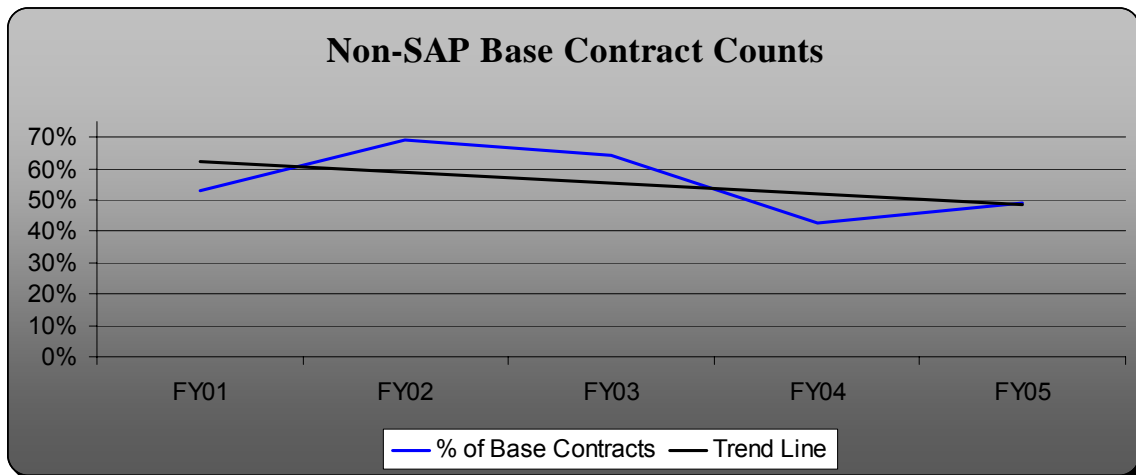


Figure 6. Averaged Non-SAP Base Contract Count Percentages

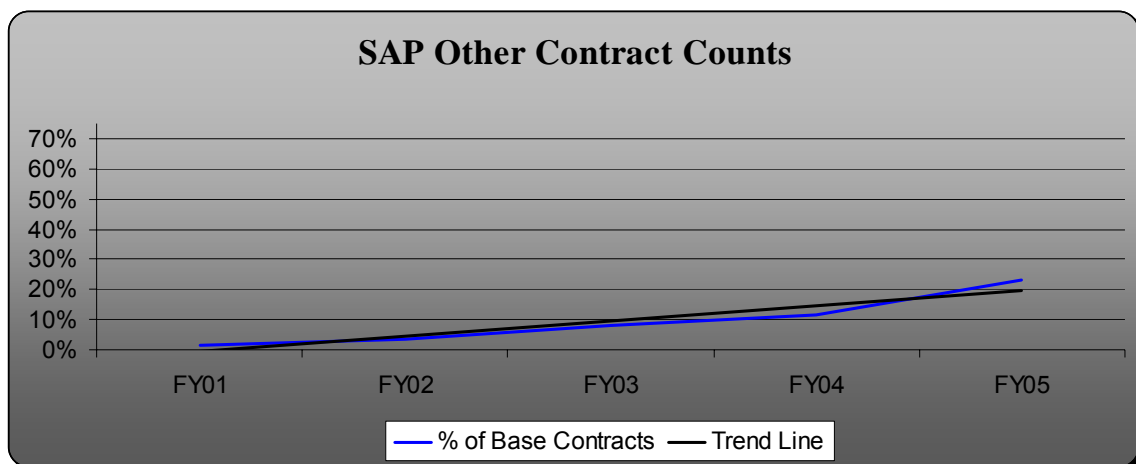


Figure 7. SAP Other Contract Count Percentages



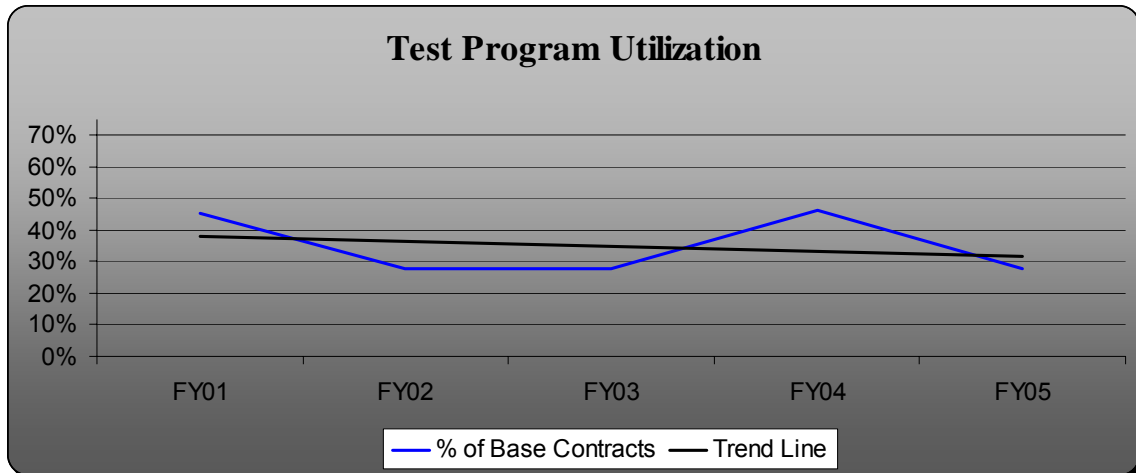


Figure 8. Test-program Utilization Percentages

D. FISC San Diego Data Review

As stated previously, this portion of the review is mainly concerned with ensuring FISCSD's activities are indicative of its larger community. The data mining here will employ all earlier methodologies used in the processing of the parent information. For comparative purposes, the focus is primarily fixed on FISCSD's base contracts due to their ability to more accurately depict concentrations of effort amongst acquisition types. However, because there are significant variations in percentages of total acquisition dollars obligated at FISCSD as compared to NAVSUP, Table 10 and Figure 9 to follow are accompanied by a few comments to acknowledge those disparities. Observations from the data include:

1. NMCI procurements dominate FISCSD obligations for Fiscal Years 2004-2005. They, in fact, represent nearly all of NAVSUP's purchases for the period in question.
2. The percentage of Non-SAP acquisition expenditures is considerably less at FISCSD than at the rest of NAVSUP. A survey of the data indicates that contracting done at Naval Inventory Control Points increases this category for NAVSUP in the aggregate.
3. Setting NMCI procurements aside for the moment, SAP buys make up a considerably larger portion of business when compared to Non-SAP figures.



Table10. FISCSD Total Acquisitions (2001-2005)

Fiscal Year	Data	Acquisition Types				Total Acquisitions
		EDS	Non-SAP	SAP - Other	SAP - FAR 13.5	
FY01						
	Sum	\$ (9,895,814)	\$ 23,261,753	\$ 448,947	\$ 14,230,245	\$ 28,045,131
	Count	107	51	2	48	208
	Average	(92,484)	456,113	224,474	296,463	134,832
	Max	2,486,063	4,192,551	348,947	2,179,126	4,192,551
FY02						
	Sum	\$ 60,162,346	\$ 63,820,538	\$ 3,257,946	\$ 9,015,419	\$ 136,256,249
	Count	194	153	21	30	398
	Average	310,115	417,128	155,140	300,514	342,352
	Max	4,808,396	4,219,070	248,439	658,655	4,808,396
FY03						
	Sum	\$ 35,168,571	\$ 62,865,910	\$ 250,000	\$ 19,788,835	\$ 118,073,316
	Count	262	161	4	63	490
	Average	134,231	390,471	62,500	314,108	240,966
	Max	4,066,477	4,817,889	150,000	1,977,010	4,817,889
FY04						
	Sum	\$ 259,506,741	\$ 13,618,102	\$ 2,073,809	\$ 16,165,600	\$ 291,364,252
	Count	549	49	11	42	651
	Average	472,690	277,920	188,528	384,895	447,564
	Max	4,562,888	3,302,086	298,738	4,577,835	4,577,835
FY05						
	Sum	\$ 147,679,491	\$ 32,293,229	\$ 22,434,367	\$ 14,311,800	\$ 216,718,887
	Count	271	72	75	37	455
	Average	544,943	448,517	299,125	386,805	476,305
	Max	4,097,519	3,499,971	2,465,399	2,999,984	4,097,519



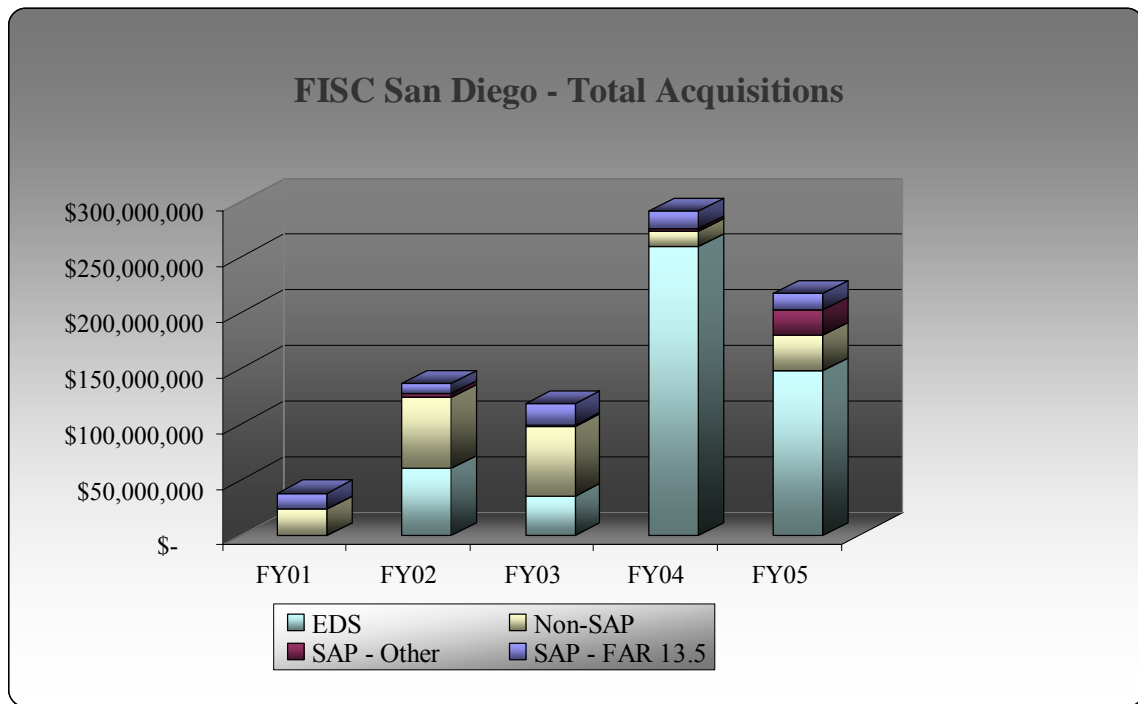


Figure 9. FISCSD Total Acquisitions (2001-2005)

Table 11 and Figure 10 that follow contain base-contract data only. Filtered exactly as the previous NAVSUP tables, these numbers are drawn from FISCSD's total acquisitions and represent only the original or base-contract actions for the period. Where the previous monetary total acquisition illustrations above contained considerable variations from the NAVUP data, these appear remarkably similar. Observations include:

1. In every category for the period, nearly all base-contract fluctuations were very comparable to that of NAVSUP's as a whole. This similarity testifies both to the ability of NAVSUP policy makers to affect change across the entire organization and to Fleet-wide changing responsibilities in response to the GWOT.
2. The only significant divergence in workload distributions from the NAVSUP data is that of SAP Other acquisition procurements. In 2005, this category accounted for over half of all FISCSD's contract builds.



Table 11. FISCSD Base Contracts (2001-2005)

Fiscal Year	Data	Acquisition Types			Total Acquisitions
		Non-SAP	SAP - Other	SAP - FAR 13.5	
FY01					
	Sum	\$ 14,092,690	\$ 448,947	\$ 2,179,126	\$ 16,720,763
	Count	34	2	48	84
	Average	414,491	224,474	45,398	199,057
	Max	2,450,736	348,947	2,179,126	2,450,736
FY02					
	Sum	\$ 37,582,149	\$ 3,257,946	\$ 7,327,406	\$ 48,167,501
	Count	85	21	26	132
	Average	442,143	155,140	281,823	364,905
	Max	4,219,070	248,439	658,655	4,219,070
FY03					
	Sum	\$ 30,263,678	\$ 200,000	\$ 17,936,800	\$ 48,400,478
	Count	90	2	56	148
	Average	336,263	100,000	320,300	327,030
	Max	3,692,538	100,000	1,977,010	3,692,538
FY04					
	Sum	\$ 10,770,027	\$ 2,073,809	\$ 16,165,600	\$ 29,009,436
	Count	27	11	42	80
	Average	398,890	188,528	384,895	362,618
	Max	3,302,086	298,738	4,577,835	4,577,835
FY05					
	Sum	\$ 12,174,571	\$ 22,734,027	\$ 12,040,075	\$ 46,948,673
	Count	40	72	27	139
	Average	304,364	315,750	445,929	337,760
	Max	1,264,632	2,465,399	2,999,984	2,999,984



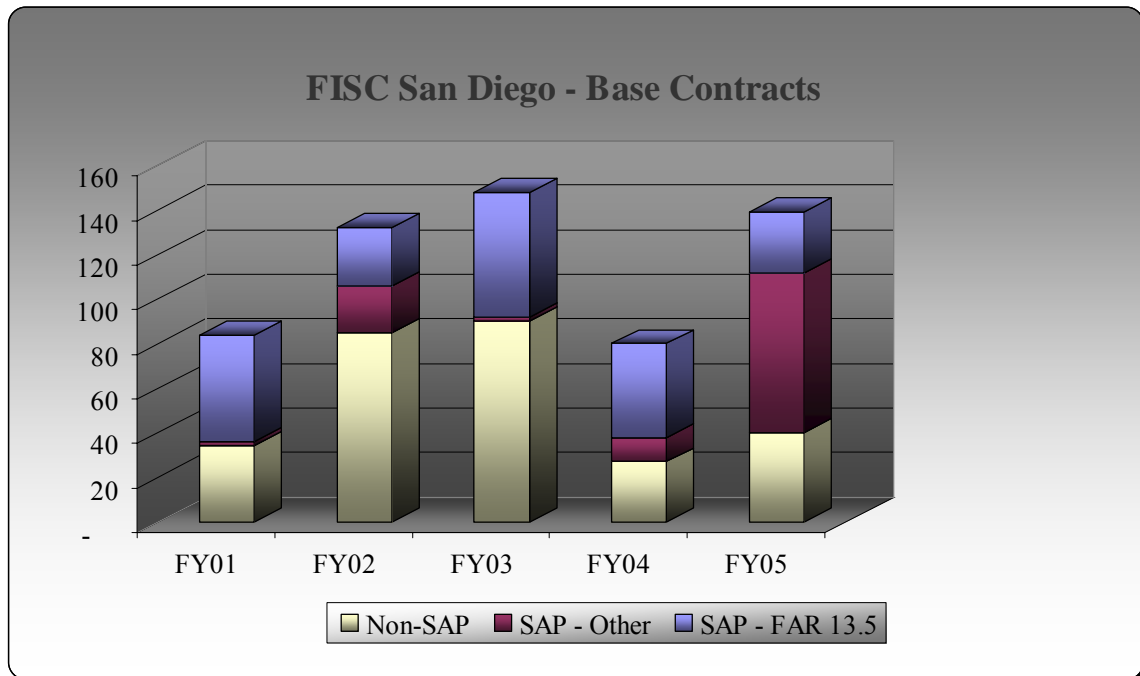


Figure 10. FISCSD Base Contracts (2001-2005)

A breakdown of FISCSD's Test-program utilization (Figure 11) is presented below in order to illustrate the point that the predominance of all acquisitions performed in this category are for dollar figures well below the program's intended use. On average, 86% of all contracts issued are less than \$500K, with only two or three obligated per year in excess of \$1M.



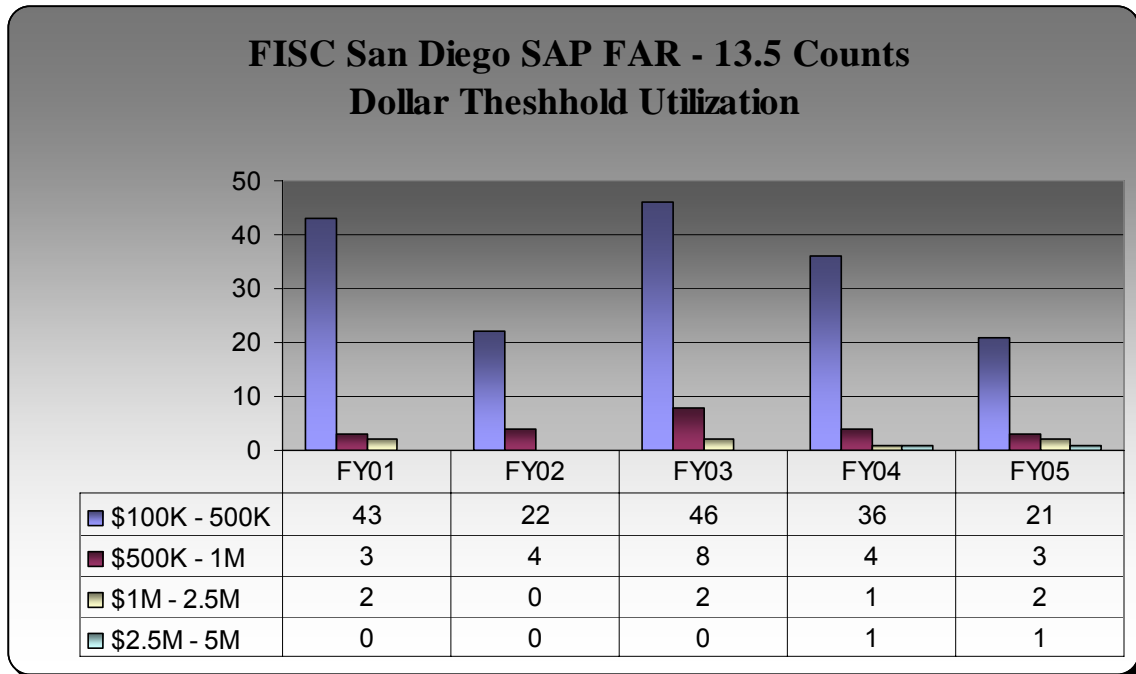


Figure 11. FISCSD SAP FAR 13.5 Dollar Threshold Utilization

For further comparisons of acquisition activities between NAVSUP and its San Diego office, Figures 12 thru 14 to follow are presented in the same fashion as the earlier NAVSUP series charts. These figures are helpful in assessing FISCSD's contracting activity utilization for each acquisition category over the test period. Trend lines in these illustrations are derived from FISCSD's data. Observations include:

1. Again, the yearly data fluctuations between NAVSUP and FISCSD are remarkably similar in amplitude, direction of movement and in their associated trend lines with regards to base-contracting activities.
2. FISCSD experienced an even larger reduction of Non-SAP acquisitions in Fiscal Years 2004 and 2005 than NAVSUP as a whole.
3. SAP Other acquisition programs are more robust and volatile at the San Diego office. This indicates that the office is more responsive to new projects and technological improvements.
4. The spike in program utilization for 2004 has more to do with the drop off of other acquisitions for the period than any actual growth in FAR 13.5 procurements.



5. FISCSD's utilization of the Test Program for the period averaged higher than its larger community. This finding supports the assertion that FISCSD is a good candidate for examining Test-program performance.

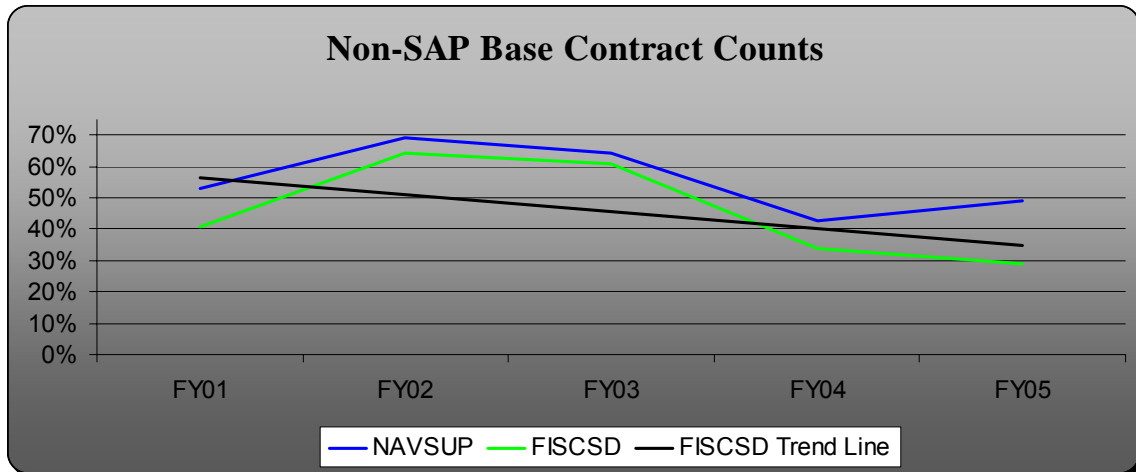


Figure 12. Non-SAP Base Contract Count Percentages

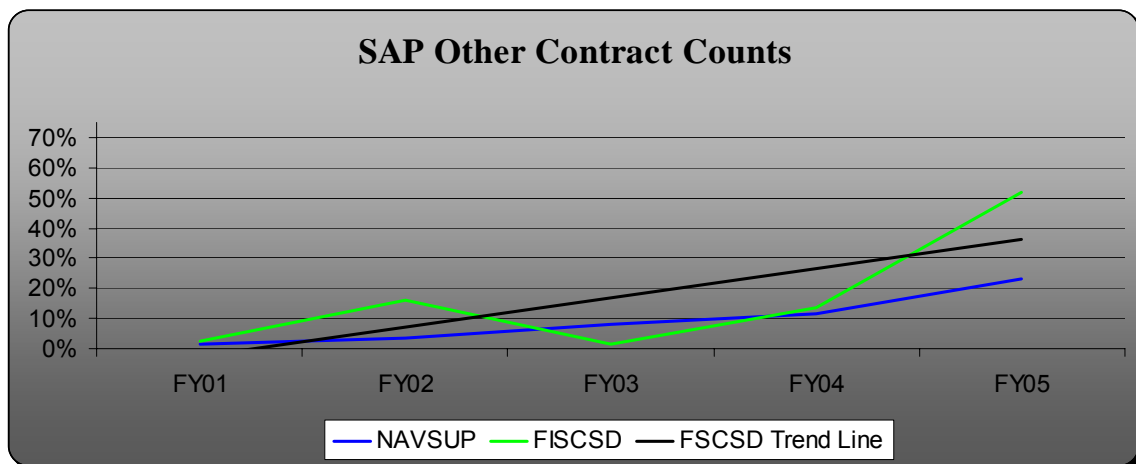


Figure 13. SAP Other Contract Count Percentages



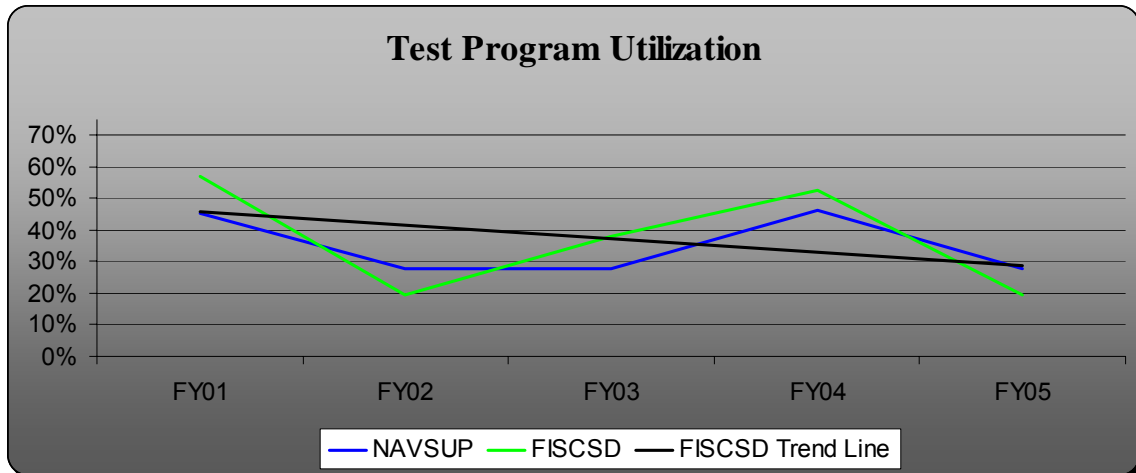


Figure 14. Test-program Utilization Percentages

E. Data Summary Conclusions

The purposes of this chapter are to make observations about NAVSUP's employment of the *FAR 13.5* Test Program and to confirm FISCSD as an adequate test site for further analysis. Numerous illustrations supported both objectives.

1. Based on total dollars obligated, findings in this research displayed that FISCSD and its related NAVSUP offices are reporting a very healthy degree of Test-program utilization. For Fiscal Years 2001 through 2005, obligations under the Test Program averaged \$129M for the whole NAVSUP organization and \$14.7M for FISCSD alone.
2. Policy makers should be encouraged by the figures Navy procurement executives report for percentages of Test-program participation in relation to total contracting activities for the period. Based on original contract awards, NAVSUP reported a 35% utilization of the program average for the period; FISCSD likewise reported a 37% utilization rate.
3. Background information and data reported signify that NAVSUP supports the program and is highly interested in its continuation beyond the test period. This conclusion is based on NAVSUP letters referenced in this chapter's introduction and the above program-employment rates.
4. Figures 10 through 12 of this chapter illustrate through comparative analysis that FISCSD is remarkably similar in its apportionment of acquisition vehicles across the contracting spectrum to NAVSUP in the



aggregate. These observations substantiate FISCSD as an excellent test subject candidate for examining how 13.5 procedures are implemented at the contracting-office level.

Before claiming victory based on these observations, however, the researcher's repeated exploration of the database catalyzed the following strong words of caution and recommendations for improving it as an oversight tool. As is, the strength of the 350 data collection is in the area of "reported utilization" of a program, vice any comment on the efficient use of said program. As illustrated in the research, the Test Program suffers from several shortcomings:

1. Poor capture ability of actual customer cycle-times on the report results in the loss of any efficiency analysis. Offices are deemed to be in compliance by stating their increasing use of the program, not by how much time savings they are transferring to their customers.
2. With the exception of a few million-plus dollar contracts, each year the Test Program's use beyond \$500K is severely limited. Total observations of its utilization fail to capture the program's poor performance above the \$500K threshold.
3. No selection in the DD350 form delineates if the purchase was **eligible** for the program. As it stands now, the DD350 data states when the program was used—not if it could have been and wasn't. Acquisitions completed by other than *FAR 13.5* procedures are, consequently, assumed to be outside its scope—which is a misleading notion for most procurements, but uncontested all the same.

DD Form 350 data collection as an oversight tool is certainly capable of making some substantial observations; but with some minor additions, it could prove to be a major force for transformation with regards to test-program utilization.

Recommendations here include:

1. The addition of a field is needed that categorizes all procurements as either commercially available or not commercially available. With such a field, oversight could scrutinize an eligible universe of acquisitions and set higher implementation goals for the program.
2. Obligations made using *FAR 13.5* procedures should be stratified into several monetary ranges. Holding offices accountable for implementing the program at quality percentages across a range of dollar thresholds



would ensure that new processes would be generated to meet new oversight requirements.

3. Customer cycle-time ranges need to be added to the form when SAPs are being reported as used. This change would transform the reporting criteria for all reporting offices from one of utilization to one of efficiency. Oversight would begin to focus on reducing this metric.

For acquisitions over \$100K specifically, this project is most interested in discovering the savings in workload levels when the SAP Test Program is used. Follow-on chapters will mainly concern themselves with this question—through an examination of FISCSD’s employment of NAVSUP policies and procedures as they contribute to the length of processing cycle-time.



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IV. FISC Contracting Office Design, Staffing and Survey of Leaders and Practitioners

A. Introduction

This chapter provides an overview of current office design, organizational process/protocol flow, training, warrant levels and workloads specific to force structure as seen through the lens of large contracting, Simplified Acquisition Procedures (SAP), and Simplified Acquisition Procedures under the Commercial-item Test at *FAR 13.5*. Analysis of the current organization is discussed in relationship to the degree and extent of the Commercial-item Test utilization. Additionally, analysis is performed to determine whether or not FISC San Diego's organizational schema fully capitalizes on the Commercial-item Test at *FAR 13.5*; finally, this discussion identifies barriers for fully capitalizing on the Test.

B. NAVSUP's Relationship to COMFISC Organization

NAVSUP Code 02 is closely linked to the COMFISC organization in several key aspects. While COMFISC exercises authority for the business operations of the FISCs, NAVSUP provides several critical business functions to COMFISC and the FISCs. Included are the following:

- Executes Head of Contracting Activity (HCA) authority for contracting policy matters, operational oversight, and specific approval actions
- Manages the NAVSUP Navy Field Contracting System (NFCS)
- Acts as Executive Agent for designated Navy programs:
 - Simplified Acquisition Procedures
 - Contract Reporting
 - Navy Electronic Commerce Online
 - Contingency Contracting
 - JWOD



- Strategic Sourcing²⁷

While NAVSUP exercises authority for the aforementioned, NAVSUP and COMFISC work in close harmony to create the business protocols and policies necessary to meet customer needs and a rapidly changing environment.

C. COMFISC Organization

In 2003, the Naval Supply Systems Command (NAVSUP) began implementation of a three-phased transformation plan based on a series of structural, functional, and customer-alignment initiatives. Principal among these initiatives was the designation of Fleet and Industrial Supply Center (FISC) San Diego as "lead FISC." FISC San Diego was assigned responsibility to drive common policies across six supply centers located in San Diego, Calif., Norfolk, Va., Jacksonville, Fla., Puget Sound, Wash., Pearl Harbor, Hawaii, and Yokosuka, Japan, and to broker workload to maximize productivity in waterfront support.

A standard FISC organization model was established and the title Commander, Fleet and Industrial Supply Centers (COMFISCS) was created to signify the Echelon III leadership of the lead FISC. COMFISCS was given responsibility for overseeing field operations through a Lead Contracting Executive, for optimizing the performance of base-supply functions such as hazardous material management, contracting, regional transportation and retail supply, and for standardizing levels of service across 16 regions and 98 Navy installations worldwide. Unique COMFISCS staff codes were created between 2003 and 2005 to manage programs across the supply domain. In addition, on 3 March 2005, a seventh FISC was established in Sigonella, Italy.

The original assumptions and concept of operations of the "lead FISC" organization were dramatically altered. Substantial changes in the scale of

²⁷ NAVSUP Code 02, Presentation to CDR (Ret) Cory Yoder and Acquisition Students, 02 November 2006. Utilized with permission.



operations and global supply support necessitated both a structure of a stand-alone flag-level Echelon III command and the reestablishment of FISC San Diego as an Echelon IV command with a captain as commanding officer.

By direction of the CNO, on 1 August 2006, COMFISCS was formally established to focus on global logistics issues and to drive best practices across the seven FISCs—thereby allowing FISC San Diego to focus on local logistics issues and to provide optimal supply support to Commander, Navy Region Southwest.

The creation of COMFISC allows for corporate governance of business protocols and practices, along with performance monitoring, across all FISC activities. The major highlights of COMFISC establishment are: 1) creation of COMFISCS Corporate Contracting Board (CCB), 2) establishment of the Lead Contracting Executive (LCE), LCE Deputy, FISC Code 200s, FISC Code 200 Deputies, 3) Corporate Charter: Single Contracting Enterprise w/ Multiple Delivery Points, 4) CONOPS: Bi-weekly conference call, annual strategic planning session, annual leadership conference, Enterprise working groups, FISC-led commodity councils.²⁸

COMFISCS, headquartered in San Diego, Calif., comprises more than 7,000 military and civilian logistics professionals operating as a single cohesive team and providing worldwide logistics services from more than 100 locations across 14 time zones. A component of the NAVSUP, COMFISCS is part of a worldwide logistics network of more than 24,000 military and civilian personnel providing "One-touch Supply."²⁹

²⁸ COMFISC Lead Contracting Executive (CAPT Jim Barnard), brief to NPS and CDR (Ret) Cory Yoder, 26 October 2006.

²⁹ COMFISC website. Accessed 25 October 2006; available from www.navsup.navy.mil.



The regionalized FISC organizations and their supported regions are as follows:

- **FISC Yokosuka**—Japan, Guam, Korea, Singapore
- **FISC Pearl Harbor**—Navy Region Hawaii
- **FISC San Diego**—Navy Region Southwest
- **FISC Puget Sound**—Navy Region Northwest, Navy Region North Central
- **FISC Jacksonville**—Navy Region South, Navy Region Gulf Coast, Navy Region Southeast
- **FISC Norfolk**—Navy Region Midwest, Navy Region Northeast, Navy Region Washington, Navy Region Mid-Atlantic
- **FISC Sigonella**—Europe, Southwest Asia

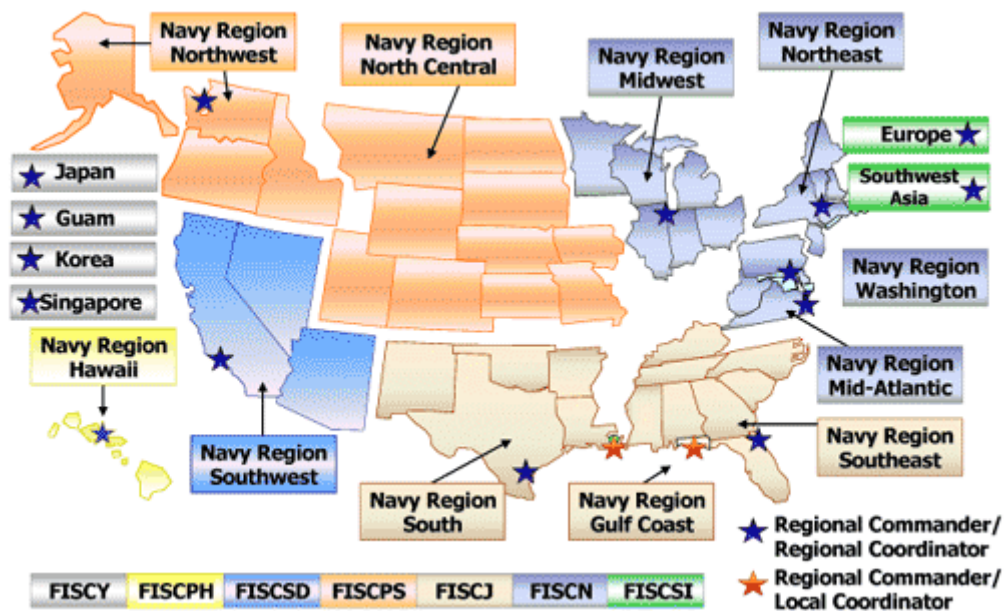


Figure 15. Regionalized FISC Organization Map³⁰

³⁰ Ibid.

D. FISC San Diego Contracting & Purchasing Organization

Following the major re-alignment indicated previously, the Fleet and Industrial Supply Center San Diego contracting organization, under the moniker “Code 200,” has been designed, staffed and aligned according to major supported customer groups. This organizational structure allows FISC San Diego to have “customer-focused” contracting support wherein the customers will have a dedicated team supporting a majority of their requirements. As indicated previously, Code 200 is responsible to, and receives direction and operational guidance from the Naval Supply Systems Command (NAVSUP), Commander, Fleet and Industrial Supply Centers (COMFISC), and FISC San Diego.

FISC San Diego’s Code 200 vision is, “to be a pace setting Acquisition Center, providing innovative, efficient, and effective business solutions that result in best value goods and services for our customers.”³¹ The director is tasked with the mission, “to provide NAVSUP enterprise customers a full range of acquisition services.”³²

FISC San Diego’s Code 200 comprised of a Director, Regional Contracts (200), Deputy Director (200A), and five support divisions with four contracting sites in a variety of higher customer-service areas (see Figure 16 below).

³¹ FISC, *FISC Staffing and Organizational Structure Checklist*, provided to researchers by FISC San Diego, August 2006. Note: this reference is on file with the researcher.

³² FISC, *FISC Mission Statement Checklist*, provided to researchers by FISC San Diego, August 2006. Note: this reference is on file with the researcher.



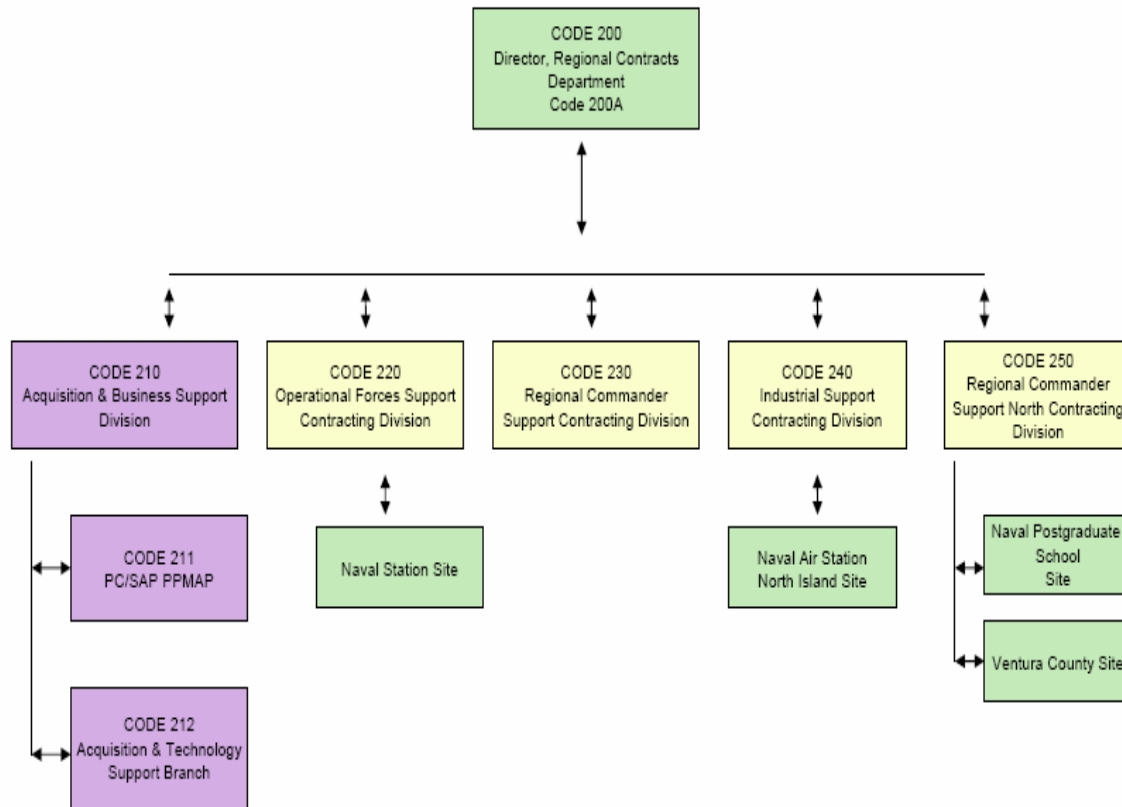


Figure 16. FISC San Diego Organization Chart³³

Each of the five support divisions is tasked to provide specific services in line with directives and procedures of NAVSUP and COMFISC. Outlined below is a brief description of each division.

FISC Code 210 is the Acquisition and Business Support Division which manages the process protocol and work designs and monitors performance with assistance from Codes 211 and 212.

FISC Code 211, Procurement and Performance Management Assessment Program (PMAAP) Branch, provides oversight and guidance to activities exercising NAVSUP-delegated Head of Contracting Activity (HCA)

³³ Adapted by researcher from organization chart provided to research team by FISC San Diego, August 2006.



contracting authority for CONUS (plus Hawaii) shore activities located West of the Mississippi, and oversees the Quality Assurance Self-assessment (QASA) program. This code functions as the internal review for compliance, protocol integrity, and sound business practice adherence for the other divisions performing contracting and purchases for supported customers and for development of metrics and monitoring systems.

FISC Code 212, Business Process and Automation Branch, is responsible for myriad functions related to the FISC Code 210 mission, including, but not limited to:

- Implementation of Contracting Policy,
- Internal Process Management,
- Management of Standard Procurement System (SPS)/Procurement Defense Desktop (PD2)—the automated system for processing requirements, constructing solicitations, awarding and administering contracts and purchases,
- Coordination of external reviews concerning contracting,
- Analysis of purchase statistics, reports, trends, workload,
- Development and monitoring of performance metrics,
- Supervision of the Quality Assurance Self-assessment (QASA) Program, an internal review program designed to determine degree of protocol compliance and performance,
- Personnel Administration
- Execution and management of contracting support within budget,
- Training Management, including monitoring DAWIA compliance,
- Response to internal and higher-authority-driven calls for information (data calls),
- Customer Relation Management,



- Execution of CPARS, the Contractor Performance Assessment Reporting System, which requires all contractors to be assessed on their performance on DoD contracts,
- Assessment and monitoring of Customer Satisfaction, and
- In-house Training.

FISC Code 220, Operation Forces Support Contracting Division, is one of four production shops (defined as actually conducting and executing purchases and contract actions and associated administration). As such, FISC Code 220 performs all requisite functions of the Procurement Contracting Officer (PCO), Administrative Contracting Officer (ACO), and, when required, of the Termination Contracting Officer (TCO). Code 220 provides contracting support for fleet and other deployable units.

FISC Code 230, Code 240, and Code 250, similarly to the aforementioned Code 220, perform all requisite functions of the Procurement Contracting Officer (PCO), Administrative Contracting Officer (ACO), and when required, Termination Contracting Officer (TCO). The only difference between Codes 220, 230, 240 and 250 is the alignment of the divisions' support mission with major supported customers. FISC Code 230 provides contracting support for Commander, Naval Installation (CNI) and the Naval Region South West (NRSW); Code 240, Industrial Support Contracting Division, provides contracting support for industrial, aviation and maritime units; Code 250, Regional Support Contracting Division North (Seal Beach), provides contracting support for Naval Region South West (NRSW) customers, located north of the immediate San Diego area.³⁴

The entire contracting organization is established in a manner that facilitates, in theory and practice, customer support. As outlined previously, the organization is

³⁴ *FISC Staffing and Organizational Structure Checklist*, provided to researchers by FISC San Diego, August 2006.



designed to function by operational divisions in order to provide full lifecycle contract support to the customer.

FISC San Diego's alignment along major supported customers is a less traditional approach of assigning and maintaining divisions than basing division on monetary thresholds in support of SAP and large contract acquisition. According to FISCSD management, this change in business process should allow for greater flexibility in fostering the acquisition workforce.³⁵

E. FISC San Diego Contracting & Purchasing Alignment versus Other Organizational Models

FISC San Diego's organizational model represents a viable alternative among competing organizational models aligned according to either commodity or monetary criteria. FISC San Diego's choice for modeling the organization was chosen to ensure that the strategic elements of the NAVSUP strategic plan³⁶ could be achieved—which includes providing, in the researcher's opinion, maximum utility and support to the customer. This alignment, it is believed, better links customers with supporting staff members. The premise of the organizational model is that customers and FISC San Diego personnel will create strong working relationships by dealing with specific teams (divisions) on a regular recurring basis.

³⁵ FISC, *FISC Management of Contracting Function Checklist*, provided to researchers by FISC San Diego, August 2006.

³⁶ NAVSUP Strategic Plan, dated 2006, is integrated into the NAVSUP web-site and directly referenced by COMFISC on the COMFISC homepage.



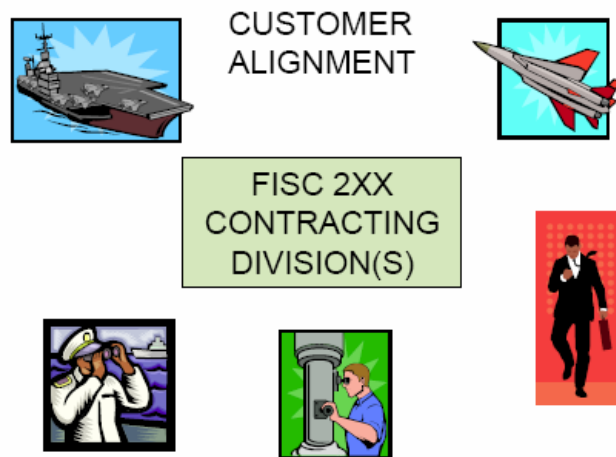


Figure 17. FISC Customer Alignment

There are alternative organizational designs which should be mentioned, as they offer alternative approaches by which to satisfy requirements. The purpose of presenting the alternative organizations is simply to highlight their strengths and weaknesses herein.

The **first alternative is alignment according to major commodity groupings**. This concept is gaining some popularity, especially at the macro-management levels. This alignment allows contracting practitioners to become "expert" in specific commodities or product lines (for example, a machine-tooling specialist that buys nothing but machine tools); this allows practitioners to become savvy in the marketplaces in which they're conducting business. Other alignments could include service contracts, industrial products, subsistence items, etc.

A **second alternative is alignment according to functional protocols**, usually associated with monetary threshold "triggers." Within the DoD and the Federal Procurement arena, the most common thresholds, or protocol triggers, are: 1) the micro-purchase threshold, 2) the Simplified Acquisition Procedure (SAP) threshold, *traditionally* at \$100,000, and 3) large contracts, representing contract

actions above the SAP threshold—again, traditionally at \$100,000.³⁷ The advantages of this methodology of alignment are that the organization can focus production protocol, training of personnel, and performance monitoring readily along the threshold points. Thus, the organization can become efficient at the threshold-specific protocols normally triggered in Federal acquisitions by dollar thresholds.

FISC San Diego, although aligned according to primary customer, nonetheless has inherent alignment according to functional protocols. This association manifests itself in each of the four contract production units (FISC Codes 220, 230, 240, and 250), as each of these divisions supporting major customers must also conduct its contracting according to established protocols associated with monetary thresholds. In this respect, the production divisions may be somewhat “hybrid” in their construct.

F. Personnel Tiers of FISC San Diego Contracting

FISC San Diego Code 200 and its subordinate Code 2XX divisions are comprised of both large contracts acquisitions (Civilian 1102 series Contract Specialists) and simplified acquisition (Civilian 1105 series Purchase Agent) personnel. There are 23 employees that hold active warrants for large-contract acquisition and 20 employees that have active warrants that support simplified acquisition.³⁸ The level of each individual’s warrant is different, based on experience, education, and requirements inherent to the organizational structure and to his/her customer alignments. Additionally, each of the contract production divisions (Codes 220, 230, 240, and 250) is a hierarchy of personnel stratified according to position, warrant authority, and pay grade.

³⁷ Note: Traditional thresholds are those **exclusive** of the Commercial-item Test at *FAR* 13.5 limitations, currently at \$5.5 million.

³⁸ FISC San Diego internal document on qualifications and acquisition management, dated 2005. Note: The source document is on file with the researcher.



The **first tier is Procurement Contracting Officer (PCO) and directors/deputy directors** which hold GS-14 or GS-15 pay grades. Each PCO or director has an unlimited warrant as to contract type and/or dollar value. At this level, each PCO/director is Level-III certified in contracting and has more than 20 years of contracting experience. In addition to PCO responsibilities, all GS-14-designated personnel hold an additional responsibility to supervise a contract specialist.

The **second tier is made up of contract negotiators/specialists** which are generally GS-13s. Contract negotiators perform all actions related to the conduct of contracting according to individual warrants. Each of the warrants issued range in dollar value from \$10M to \$1M. These 1102s are authorized to enter into contracts, regardless of contract type, within the prescribed monetary limits of the warrant. They are often assigned case loads of actions which may exceed their warrant authority, in which case the PCOs in the group will review and award the action.³⁹

The **third tier of contract negotiators is 1102s at the GS-12 pay grade.** Warrants and scope vary among these negotiators. Dollar limits range from \$25K to \$100K. Most 1102s in this pay grade are authorized unlimited Type-I delivery orders and modifications, as well as Type II under the NMCI contract N00024-00-D-6000.

The **fourth tier is made up of 1105s and 1102s acting as Purchasing Agents** who execute Simplified Acquisition Procedure (SAP) purchases. Purchasing Agents' pay grades fall between GS-07 and GS-12. These SAP agents are primarily used to take action for purchase orders that do not exceed the traditional SAP threshold of \$100K.

³⁹ Note: This is a simple description of a more complex protocol. There are Contract Review Board (CRB) requirements for certain actions and monetary thresholds that add complexities not indicated by the narrative.



Below is a summary of the warranted personnel at FISC San Diego, August 2005:

Table 12. Warranted Personnel—Large Contracts⁴⁰

POSITION	# OF PERSONNEL	PURCHASE ORDER HIGH LIMIT	PURCHASE ORDER LOW LIMIT
Director	1	Unlimited	
Deputy Director	1	Unlimited	
GS-14	4	Unlimited	
GS-13	9	\$10,000,000	\$1,000,000
GS-12	7	\$100,000	\$25,000
GS-11	1 ⁴¹	\$500,000	

Table 13. Warranted Personnel—Simplified Acquisition⁴²

POSITION	# OF PERSONNEL	PURCHASE ORDER HIGH LIMIT	PURCHASE ORDER LOW LIMIT
GS-12	1	SAP Threshold	
GS-11	2	SAP Threshold	\$25,000
GS-9	2	\$100,000	\$25,000
GS-8	10	\$25,000	\$15,000
GS-7	5	\$100,000	\$10,000

G. DAWIA Contracting Certifications and Warranting

Illustrated in the following two tables are the most recent Defense Acquisition University (DAU) education, training and experience requirements for both 1102 and

⁴⁰ *FISC San Diego Warrant Log*, PPMAP, 2005. Provided to research team by FISC San Diego August 2006.

⁴¹ One GS-11 contracting specialist working at Seal Beach is the exception to the \$100K maximum purchase limit normally authorized from GS-12 to GS-07.

⁴² *FISC San Diego Warrant Log*, PPMAP, 2005. Provided to research team by FISC San Diego August 2006.



1105 career fields by levels. Each of the career tracks has mandatory and desired standards that are designed to facilitate the overall development of contracting and purchasing specialists and supervisors.

Table 14. Requirements for 1002 Contract Specialist Certification⁴³

Requirements for 1102 Contract Specialist Certification	
Level I	
<ul style="list-style-type: none"> □ EDUCATION¹ □ Baccalaureate degree □ At least 24 semester hours among accounting, law, business, finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management □ EXPERIENCE □ 1 year of contracting experience □ TRAINING □ CON 100 Shaping Smart Business Arrangements □ CON 111 Mission Planning Execution □ CON 112 Mission Performance Assessment □ CON 120 Mission Focused Contracting □ 1 Elective² 	<ul style="list-style-type: none"> □ TRAINING □ CON 214 Business Decisions for Contracting □ CON 215 Intermediate Contracting for Mission Support □ CON 216 Legal Considerations in Contracting □ CON 217 Cost Analysis and Negotiation Techniques □ CON 218 Advanced Contracting for Mission Support □ 2 Electives²
Level II	
<ul style="list-style-type: none"> □ EDUCATION¹ □ Baccalaureate degree □ At least 24 semester hours among accounting, law, business, finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management □ (Desired) Graduate studies in business administration or procurement □ EXPERIENCE □ 2 years of contracting experience □ (Desired) An additional 2 years of contracting experience 	<ul style="list-style-type: none"> □ EDUCATION¹ □ Baccalaureate degree □ At least 24 semester hours among accounting, law, business, finance, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management □ (Desired) Master's degree in business administration or procurement □ EXPERIENCE □ 4 years of contracting experience □ (Desired) An additional 4 years of contracting experience □ TRAINING □ CON 353 Advanced Business Solutions for Mission Support □ 2 Electives² □ (Desired) 2 weeks of management and leadership training
Notes: ¹ See 10 U.S.C. 1724 (provides for limited exceptions). ² As agreed to by the supervisor, electives may be any training opportunities related to the employee's job or necessary for career development for cross training. Electives may include no-cost distance learning or other training opportunities, assignment-specific courses funded by DAU/DACM, or other training opportunities funded by the student's organization.	

Source: Derived from http://www.dau.mil/catalog/cat2007/Appendix_B.pdf

⁴³ Certification chart taken directly from *DAU 2007 Catalog*, 2006. Accessed 2 November 2006; available from http://www.dau.mil/catalog/cat2007/Appendix_B.pdf.



Table 15. Requirements for 1105 Purchasing Agent Certification⁴⁴

Requirements for 1105 Purchasing Agent	
Level I <input type="checkbox"/> EDUCATION <input type="checkbox"/> (Desired) 16 semester hours of undergraduate work with emphasis in businessBaccalaureate degree <input type="checkbox"/> EXPERIENCE <input type="checkbox"/> 1 year of experience in purchasing <input type="checkbox"/> TRAINING <input type="checkbox"/> CON 100 Shaping Smart Business Arrangements <input type="checkbox"/> CON 237 Simplified Acquisition Procedures (or students may elect to take the Simplified Acquisition Procedures continuous learning module available at http://clc.dau.mil) <input type="checkbox"/> DOD Government Purchase Card continuous learning module	<input type="checkbox"/> TRAINING <input type="checkbox"/> CON 100 Shaping Smart Business Arrangements <input type="checkbox"/> CON 111 Mission Planning Execution <input type="checkbox"/> CON 112 Mission Performance Assessment <input type="checkbox"/> CON 120 Mission Focused Contracting
Level II <input type="checkbox"/> EDUCATION <input type="checkbox"/> (Desired) 32 semester hours of undergraduate work with emphasis in businessBaccalaureate degree <input type="checkbox"/> EXPERIENCE <input type="checkbox"/> 2 years of contracting experience	Level III <input type="checkbox"/> EDUCATION <input type="checkbox"/> (Desired) 64 semester hours of undergraduate work with emphasis in businessBaccalaureate degree <input type="checkbox"/> EXPERIENCE <input type="checkbox"/> 3 years of contracting experience <input type="checkbox"/> TRAINING <input type="checkbox"/> 2 Electives

Source: Derived from http://www.dau.mil/catalog/cat2007/Appendix_B.pdf

According to the DAU catalog for 2007, contracting specialists and purchasing agents have specific roles and responsibilities. Based on his/her roles, each is afforded tailored education, training and experience to capitalize on his/her individual expertise. Specifically, contacting specialists are: “business advisors that create effective, efficient and proper business arrangements, have strategic focus on acquisition and leverage DoD spending to use taxpayers’ money prudently based upon customers’ needs.”⁴⁵

This role and the responsibilities of a contacting specialist, combined with the certification requirements, qualify an 1102 for large contact acquisition. However, they do not grant an 1102 the training or experience that SAP under *FAR 13.5* requires. The traditional pipeline for training, education or experience does not require an 1102 have any SAP training or experience. Clearly, an 1102 would have little to no experience in the proper use and implementation of *FAR 13.5*. The researcher believes that since there is not a formal training program currently implemented at FISC Code 200 for 1102s, they may have a tendency to approach SAP procurements in the same manner as large contracts acquisitions—thus, over-

⁴⁴ Ibid.

⁴⁵ Ibid.



complicating SAP requirements. This possible/probable over-complication of SAP purchases would increase PALT and cause acquisition to become less efficient and less effective—not only from an organizational standpoint, but from a customer-support perspective as well. The researchers feel 1102s that do not have recent experience nor training in SAP need to be given specific DAU training and on-the-job experience.

In addition to the probable issues regarding 1102 utilization of SAP procedures, this analysis has led to the conclusion that currently, 1105s employed at FISC are not being utilized to their full potential. As the table above indicated, 1105 SAP personnel have the desired skill-set to be able to fully implement SAP buying requirements; therefore, they have the potential to employ *FAR 13.5* as originally intended. Of the two groups (1102s and 1105s), only the 1105s have specific training (i.e., CON 237 Simplified Acquisition Procedures) relating to *FAR 13.5*. Yet, they are not able to apply this knowledge. The problem comes not from education, training or experience, but from something discussed earlier in the chapter—warrant levels. They simply do not have the warrant level necessary to exercise their expertise. The researcher contends that if *FAR 13.5* is to be used to its full potential, 1105s must be granted warrants equal to their abilities. However, there will need to be a change in how warrants are authorized for those tasked with SAP purchases to the \$5.5M threshold. This issue will be further discussed on the pages that follow.

Additionally, since the contracting organization is centered around organizational customers by division, the researcher feels all purchasing agents and contracting specialists will need SAP-refresher training offered by the DAU via online continuous-education modules. The latest version of SAP training will qualify first-time 1102s and those who have not certified recently to work in the SAP acquisition arena.

All warranted contracting personnel within FISC Code 200 (whether they are 1102-series Contract Specialists or 1105-series Purchase Agents) are either Defense Acquisition Workforce Improvement Act (DAWIA) Contracting (CON) Level-



II or Level-III certified. The following illustrations show the percentages of employee certifications by designation.

The 1105 Purchase Agents are predominantly DAWIA CON Level-III certified, as indicated by FISC San Diego's PPMAP from 2005.⁴⁶

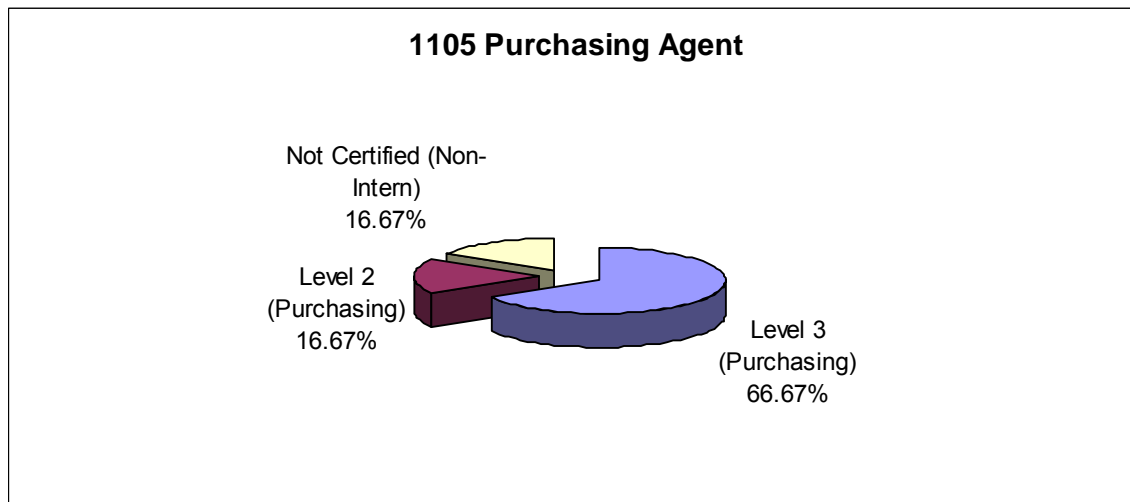


Figure 18. FISC San Diego 1105 Purchasing Agent Certification Levels⁴⁷

The 1102-series Contract Specialists are nearly evenly split between DAWIA CON Level II and CON Level III, as indicated by FISC San Diego's PPMAP from 2005.

⁴⁶ FISC, *FISC San Diego Purchasing Agent DAWIA Level Certification in Purchasing*, PPMAP, 2005. Provided to researchers by FISC San Diego, August 2006.

⁴⁷ Ibid.



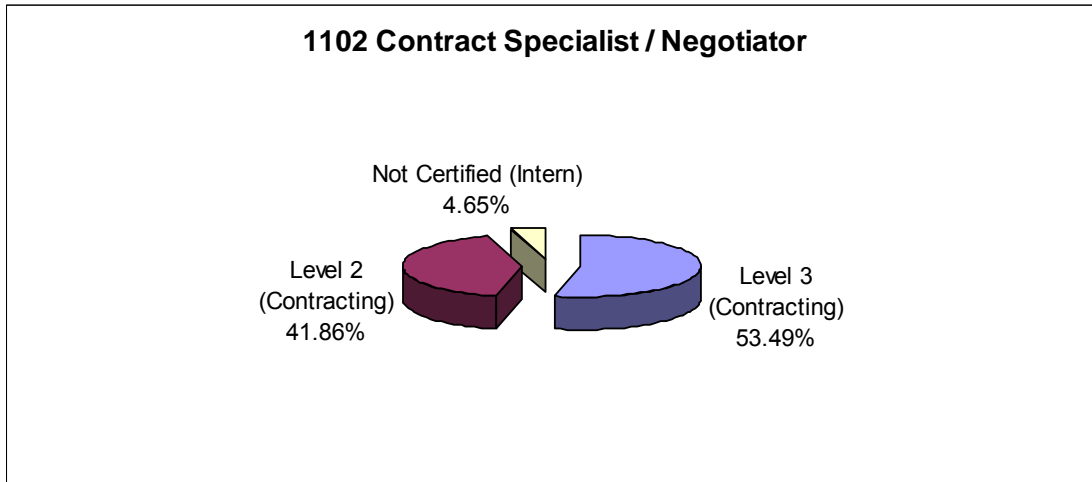


Figure 19. FISC San Diego 1102 Contract Specialist Certification Levels⁴⁸

Additionally, the years of experience for 1102s that are Level II- or Level III- certified is 15 years and 24 years respectively. Overall, the level of experience among 1102s at FISC San Diego is broad—with 80% having 15 or more years' experience. The illustration below is the specific grouping of years of experience as indicated by FISC San Diego's PPMAP from 2005.

⁴⁸ *FISC San Diego Contract Specialist DAWIA Level Certification in Purchasing*, PPMAP, 2005. Provided to researchers by FISC San Diego, August 2006.



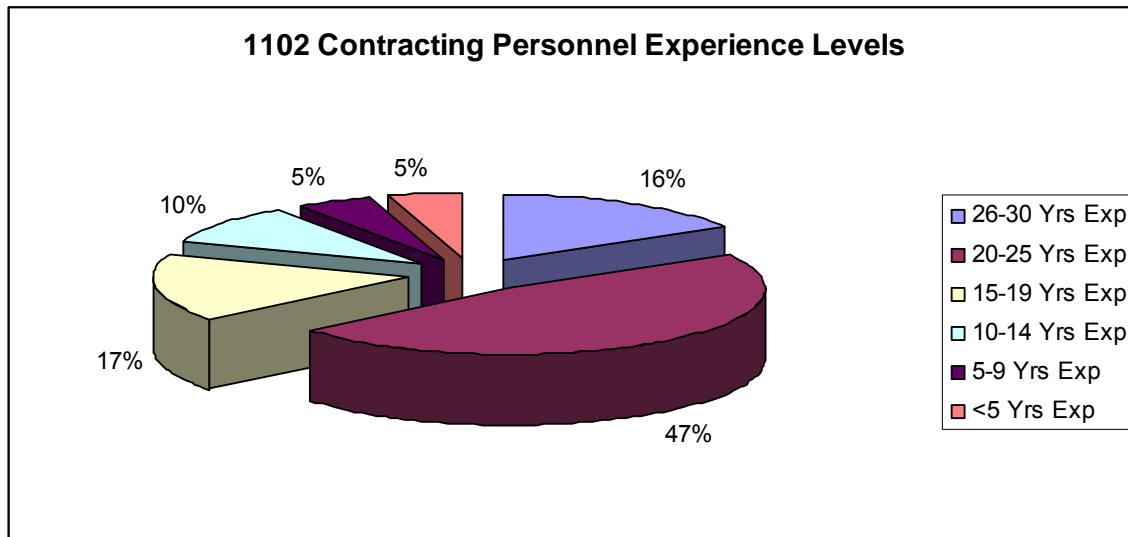


Figure 20. FISC San Diego 1102 Contract Specialist Experience Levels⁴⁹

The work force education level in Code 200 varies among 1102- and 1105-coded individuals. On average, 50 to 74% of 1102 Contract Specialists working for Code 200 have graduated from a college or university and hold a Bachelor's or Master's degree. Based on information from a self-assessment within the FISC San Diego organization, 75 to 99% of 1102s are DAWIA-certified to work in their current, assigned positions. Additionally, 50 to 74% of large-contract personnel are certified to work beyond their current position, excluding DAWIA Level-III personnel. However, the dollar threshold of most 1102s is limited to \$1M or less.⁵⁰ Fully 75 to 99% of the 1105 Purchase Agents are DAWIA-certified commensurate to their respective positions. As with the large-acquisition 1102s, it is the opinion of the researcher that 100% of SAP professionals should be certified to work in their current positions. Codes 200, SAP-designated 1105s generally have the level of training and certification to expand upon their current warrant level—which means implementation of *FAR 13.5* is possible. However, organizationally, FISC Code 200 would have to make changes as to how and when to increase warrant levels for both

⁴⁹ Ibid.

⁵⁰ *Workforce Education Survey*, PPMAP, 2005. Provided to researchers by FISC San Diego, August 2006.



SAP and large-contract personnel. As the organization is currently structured, only a select few have a warrant of \$5 million or above, and of those, nearly half are in a PCO or Directory position. However, none of the 1105s are authorized to make purchases above \$100,000, and 73% of 1105s in Code 200 are limited to purchases of \$25,000 or less.⁵¹ This limited purchase threshold is a barrier to maximizing *FAR 13.5* and only more strongly asserts a review of internal procedures for issuing increases in warrant levels among those that are currently qualified is necessary. A goal of strengthening the training programs and increasing the percentages of contract personnel that hold DAWIA Level-III certifications for both 1102s and 1105s is imperative in order to make full use of the provisions of *FAR 13.5*.

The current warrant levels for most large contracts and all SAP buyers seem to contradict a statement found in an organizational climate self-assessment, which states:

FISCSD employees are encouraged to make decisions at the lowest level in order to expedite service to the customer. FISCSD employees are provided with the policy and guidance to make daily decisions about a variety of issues. Operational Divisions foster an environment wherein decisions are made at the lowest level. In addition, FISCSD warrants all purchasing agents and contract specialists to at least the \$25K threshold which further empowers employees and enables independent decisive making at the lowest level.⁵²

In order to cooperate with this statement, a greater number of 1102s and 1105s would need to be warranted to a level that captures the efficiency which *FAR 13.5* seeks to foster. Another concern that was outlined during the self-assessment is that job rotation and training are not fully supportive of contracting personnel.

A formal job rotation program has been considered on several occasions, however, to date not developed and implemented. Staffing

⁵¹ Ibid.

⁵² *Employee Focus/Organizational Climate Checklist*, PPMAP, 2005. Provided to researchers by FISC San Diego, August 2006.



reductions and mission demands tend to impede a formal program, however, bring about the need for job rotation in support of specific mission demands. Employees, through personnel details have been given opportunities to perform functions in support of other Division responsibilities. Management ensures interns, CMDP participants, etc., are afforded meaning rotational assignments that benefit the employee and the company.⁵³

The cultural challenges faced by this contracting activity will also have to be addressed. As with any organization, major changes to work assignments or levels of responsibility will have to be clearly explained and supported. This researcher postulates that FISCSD is not being restricted by increased governmental regulation prohibiting execution of *FAR 13.5*, but is limited more by long-engrained fears of protest, challenges, and organizational realignment with regard to positions, pay grades and warrant levels. The list below is a compilation of some of the concerns expressed by personnel at FISCSD concerning implementation of *FAR 13.5* and the possibility of increased warrant levels above the current levels (the following statements and observations were gathered by the research team):

- Control of warrants by management are based on experience, pay grade and management level of confidence. Implementation of *FAR 13.5* to the \$5.5M limit would require buyers have their warrants increased, thus adversely affecting current warranting policy.
- If some personnel warrants are increased to maximize *FAR 13.5*, this may interfere with inter-office cohesiveness, e.g., a lower pay grade buyer holding the same or higher warrants as someone in a higher pay grade will create animosity in the office and between divisions.
- Some in management feel that a GS-11 buyers' level of knowledge is insufficient to increase warrants to \$5.5M.
- Authorizing contracting personnel greater warrants at lower pay grades may open the door for billet reclassification and possible workforce reduction at higher levels.

⁵³ Ibid.



- Contracting specialists will have a tendency to error on the side of caution and add clauses to contracts and follow the process suited for large acquisitions in order to guard against possible protest or external audits.
- Perhaps full implementation of *FAR 13.5* is not realistic for real-world contracting where warrants and jobs are on the line.
- Since individual 1102s decide on whether or not they use *FAR 13.5* or another means of contract solicitation, a policy change would have to be enforceable to ensure compliance.⁵⁴

H. Summary

At each level, the Code 200 personnel are organized in a manner that limits full implementation of *FAR 13.5*; limited warrants are authorized for all SAP purchasing agents, and 52% of large-contract personnel warrants are \$1M or less.⁵⁵ The research shows that in order to fully implement *FAR 13.5* across the FISC network, warrants for some SAP buyers will need to increase to the maximum limit of \$5.5M. Although all contract specialists, purchasing agents, and contract negotiators are Level-II or Level-III certified, they are limited by warrant from fully embracing *FAR 13.5*. This restriction limits FISC San Diego from being able to completely incorporate process improvements afforded to it via *FAR 13.5*.

Congress included *FAR 13.5* to relieve the contract administrator of the labor-intensive procedures for acquisition above the traditional SAP threshold. In order to maximize the provisions of *13.5*, additional training on *FAR 13.5*, as well as continuing formal education and training programs focused toward process improvement, will be needed. Specifically, initial or refresher training on CON 237

⁵⁴ Personal Interviews. These comments were gathered by the research team from various contracting professionals at Code 200 FISCSD, August 2006. Identities and details are not for distribution.

⁵⁵ *Warrant Log*, PPMAP, 2005. This information was gathered and noted during site visit at FISC San Diego, August, 2006.



SAP is essential to ensure that both 1102s and 1105s have the latest training offered by DAU—especially since nearly 50% of all annual contract actions are SAP.

The level of experience within the organization is such that with a dedicated effort, the current workforce can be trained and certified to be able to employ *FAR 13.5* as intended. The organizational, cultural concerns that seem to exist will have to be addressed to facilitate a climate that will embrace these warrant increases for those capable of exercising SAP to the extent outlined in *FAR 13.5*.



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V. Procedures and Protocol at FISC San Diego

A. Published Protocol

This chapter provides an overview of current acquisition processes and protocols at Fleet and Industrial Supply Center (FISC) San Diego as seen through the lens of large contracting, Simplified Acquisition Procedures (SAP), and Simplified Acquisition Procedures under the Commercial-item Test at *FAR 13.5*. As part of the COMFISCS organization discussed in Chapter IV, FISC San Diego was chosen both for its proximity to the Naval Postgraduate School in Monterey, California, as well as for the COMFISCS staff at the same location. Analysis is performed to both determine the extent FISC San Diego's process flow fully capitalizes on the Commercial-item Test at *FAR 13.5*, as well as to identify barriers in achieving the maximum benefits of this Test.

Several major constructs are examined: 1) the difference in protocols between large contracting and Simplified Acquisition Procedures, 2) the decision criteria and framework the FISC utilizes to allocate workload to either the large contracting processes or to the SAP process under the \$5.5 million *FAR 13.5* test, 3) existing barriers to effective and efficient allocation of purchase requests to the *FAR 13.5* protocols. Finally, observations and recommendations related to the findings are provided.

B. An Overview of Requisition Processing

The illustration below (Figure 21) depicts, in the barest sense, how FISC San Diego processes a requisition. The next two subchapters examine these steps further and seek to determine if the correct methodologies are being employed when a particular method of acquisition is utilized. The key decision in this summary diagram is the determination of whether the acquisition will be a large contract acquisition, a simplified acquisition, or an acquisition using the Commercial-item Test at *FAR 13.5*. The key driver in FISC San Diego's decision is the dollar value of



the acquisition. Currently, that dollar value is set at \$100,000 unless the Commercial-item Test at *FAR 13.5* is applied. This threshold is not arbitrarily derived; it is taken from the *FAR*.⁵⁶ Once this decision has been made, there are some distinct process differences that need to be examined. Appendix I provides a summary of many of the pre-solicitation activities required.

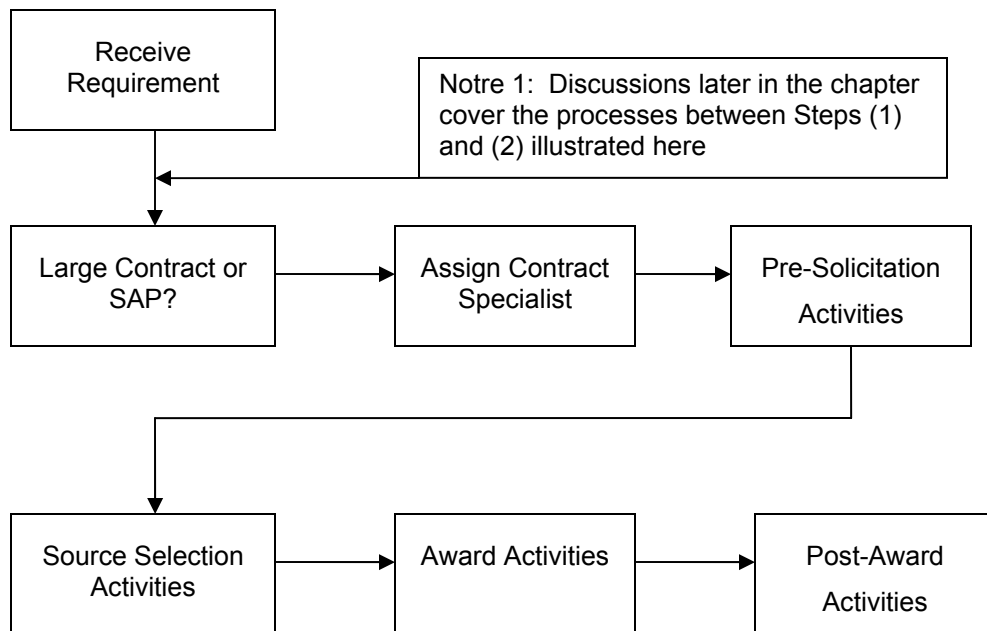


Figure 21. Requisition Flow Overview

Receipt of Requirement.

This step in the process chart is fairly obvious, for without the requirement the entire process is moot. Purchase requests for supplies and/or services are normally submitted on either a DD Form 1149 or NAVCOMPT Form 2276. Upon receipt, the COMFISCs Comptroller will review the requisition for fiscal time, purpose and amount. Fiscally acceptable documents will be forwarded to FISC San Diego for execution. COMFISCs Comptroller review and acceptance will occur within 24 business hours. COMFISCs Comptroller review and acceptance does not relieve the initiating Comptroller's

⁵⁶ GSA, DoD, NASA, *Federal Acquisition Regulations Part 13.003(b)(1)* (Washington, DC: authors, 2005).



responsibility to ensure regulatory and statutory compliance prior to submission.⁵⁷

Selection of Contract Process.

FISC San Diego utilizes a threshold of \$100K for SAP. Anything over \$100K is considered a large contract. An exception is made if the acquisition is to be made under the Commercial-item Test at *FAR 13.5*. In that case, use of SAP is authorized for the acquisition of supplies and services up to \$5.5M.⁵⁸

Assignment of Contract Specialist.

Once the contract type, simplified or large contract, has been determined, a Contract Specialist is assigned by the PCO. In informal discussions with supervisory personnel, this researcher was informed that the assignment of a Contract Specialist is based primarily on the workload of the Contract Specialist from the perspective of the supervisor. Warrant levels and ability also play a part in the decision.

Pre-solicitation Activities.

Prior to the actual solicitation, FISC San Diego will conduct market research, draft or assist in drafting the acquisition plan, perform Small Business coordination, and prepare the Source-selection plan.

Source-selection Activities.

Once the solicitation has been issued, the source-selection process begins. All proposals are evaluated based on factors found within the solicitation but can broadly be categorized as technical and price-related. During this time, discussions may or not be held. Finally, negotiations are conducted which lead to contract award.

Award Activities.

This phase includes not only the award of the contract itself, but rejection, in writing, of those offerors who did not obtain the award. These notifications include all of the necessary written decisions justifying why the Contracting Officer made his/her decision.

⁵⁷ *FISC San Diego Customers' Guide*, 2005. Provided to researchers by FISC San Diego, August 2006.

⁵⁸ GSA, DoD, NASA, *Federal Acquisition Regulations Part 13.500* (Washington, DC: authors, 2006).



Post-award Activities.

Post-award activities for a large contract include the assignment of an ACO and the proper administration of the contract in accordance with the conditions outlined in *FAR Chapter 42*.

C. Requisition Processing (Large)

The section examines FISC San Diego's current policies and protocol with respect to large contracts. For FISC San Diego, a large contract is, typically, one that exceeds \$100K. There are many, many steps that can make up a large contract acquisition. While many clauses can be included as necessary, there are six factors that must be included in any large-item acquisition. They include:

Market research.

Market research points managers to the most suitable approach to acquiring, distributing and supporting supplies and services. Market research should be conducted with the proper attention paid to both the cost of research and the cost of not researching—the risk of acquiring an item which is not the best value for the government.

Acquisition Strategy.

An acquisition strategy document meeting the review thresholds of the Management and Oversight Process for the Acquisition of Services and Supplies (MOPAS) must be prepared for any acquisition over \$100K.⁵⁹ This requirement is NAVSUP's response to the increased scrutiny of the acquisition of supplies and services. The typical acquisition strategy will contain the following parts:⁶⁰

Reporting Information.

This section contains the Requiring Activity, the Requisition Number, the Contracting Office, the Contracting Officer's contact information, and the Contract Number/Task Order Number (to be filled in after award).

⁵⁹ COMFISCS, *Customer Guide for Large Contracts over \$100,000*, 2006.

⁶⁰ NAVSUP Purchase Procedure PL 05-13(2).



Requirements.

This section contains what is needed for the acquisition but asks the second- and third-order questions such as: have we had a need for this previously?

Risk.

In this section, the inherent cost, schedule, and performance risks which may affect the acquisition are discussed, as well as any risk-mitigation plans.

Competition.

This section addresses whether the contract will be competed or if it will be a sole-source procurement. If sole-source, the status of the Justification and Approval must be included in the strategy.

Implications.

This section addresses the effect of the acquisition on any socio-economic programs, such as small businesses.

Business Arrangements.

This section addresses the expected arrangement into which the government will be entering.

Multi-year Contracts.

Typically, this section is for major systems acquisition only.

Leasing.

This section will contain a lease-purchase analysis if necessary.

Required Approvals.

The level of the approving official is based on the dollar value of the acquisition. A breakdown of approving officials is as follows:



Senior Contracting Person where only authority over \$100K is task order authority.	\$100K - \$500K
Level above Contracting Officer	\$100K - \$1M
Chief of Contracting Office	\$1M - \$10M
NAVICP OA or OS/FISC CO	\$10M - \$50M
CDR or ED, NAVICP/COMFISCS	\$50M - \$100M
SUP 00/SUP ED	\$100M - \$500M
DASN (ACQ)	\$500M - \$1B
ASN (RD&A)	> \$1B

Table 16. Acquisition Strategy Approving Authority⁶¹

Statement of Work.

The Statement of Work (SOW) must accurately describe what is required and what constitutes completion of the contract. A SOW can be either performance based or non-performance based. For performance-based SOWs, the delineation of responsibilities must be clearly defined. Either the government or the contractor can prepare the Performance-based Work Statement, the Performance Metrics, and the Quality Assurance Plan.⁶²

Independent Government Cost Estimate (ICGE).

The ICGE is used to determine cost realism and is meant only for the government. It is a basis for the government to negotiate a fair deal with the contractor.

Funding Documents.

For all large contract acquisitions, a certified funding document will be included in the Contract Requirements Package.

Source-selection Plans.

A detailed source-selection plan will be included in the government solicitation. This plan will include the breakdown of what is being reviewed (evaluation factors) and how much emphasis is being placed upon each

⁶¹ M. A. Ziegler, member of research team, extracted from NAVSUP Purchase Procedures PL 05-13(2)

⁶² COMFISCS, *Customer Guide for Large Contracts over \$100K*, 2006.



factor. The evaluation will either be based on the Lowest Price Technically Acceptable (LPTA) or on the “Best Value” principle.⁶³

As stated previously, there are numerous clauses, which may be included if an individual requirement is determined necessary. The use or non-use of these clauses is mainly at the discretion of the PCO. Each of these clauses result in additional administrative costs to the acquisition and, because of that, should be used judiciously.

C. Requisition Processing (SAP)

This section examines the current policies and protocol of FISC San Diego with respect to SAP. FISC San Diego’s *Customer and Buyers Guides* were reviewed. The results are presented herein.

SAP were created with the following goals in mind:⁶⁴

- to reduce administrative costs,
- to improve opportunities for small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns to obtain a fair proportion of Government contracts,
- to promote efficiency and economy in contracting, and
- to avoid unnecessary burdens for agencies and contractors.

In addition to the above goals, contracting officers are charged with the following:⁶⁵

- to promote competition to the maximum extent practicable,
- to establish deadlines for submission of responses to solicitations that afford suppliers a reasonable opportunity to respond,

⁶³ Ibid.

⁶⁴ GSA, DoD, NASA, *Federal Acquisition Regulations Part 13.002* (Washington, DC: authors, 2005).

⁶⁵ Ibid., *Part 13.003(h)*.



- to consider all quotes or offers that are timely received, and
- to use innovative approaches to the maximum extent practicable.

The basis for an award under SAP is the determination of a fair and reasonable price. To determine a fair and reasonable price, the Contracting Officer is supposed to:⁶⁶

- base price reasonableness on competitive quotations or offers. In other words, let the market determine a fair and reasonable price.
- include a statement of price reasonableness in the contract file *if only one offer is received*. The contracting officer can base that statement on:
 - market research
 - comparison to previous purchases
 - current price lists, catalogs, or advertisements
 - comparison with similar items in a related industry
 - contracting officer's personal knowledge of the item being procured
 - comparison to an independent government estimate
 - any other reasonable basis

D. Determining Commercial-item Status and *FAR 13.5* Eligibility

The acquisition community has been directed to increase the use of commercial acquisitions.⁶⁷ The reasoning behind this direction is to maximize the utilization of existing technology, to allow the marketplace to determine a fair and reasonable price for a product or service, and to increase efficiency in the entire process. By utilizing the policies and procedures found in *FAR Chapter 12*,

⁶⁶ Ibid., *FAR Part 13.106-3(a)*, extracted August 2006, and validated February 2007.

⁶⁷ Under Secretary of Defense, Acquisition Technology and Logistics, memorandum: "Commercial Acquisitions" (Washington, DC: author, 5 January 2001). (Provided as Appendix A).



legislators and defense administrators alike hope that the end result will be more commercial acquisitions.

Coordinating with this directive was authorization of the Commercial-item Test at *FAR 13.5*. This program allows for the use of SAP for acquisitions up to \$5.5M.⁶⁸ The purpose of the Commercial-item Test at *FAR 13.5* is to:

vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the government and industry.⁶⁹

It would appear that the use of commercial-item status and the *FAR 13.5* Test Program would go hand in hand, but it has not quite worked out that way. Based on informal discussions with personnel at FISC San Diego, the research team discovered the true nature of *FAR 13.5* Test Program is not universally understood or accepted.

Chapter III depicts a fair percentage of acquisitions that were allegedly procured utilizing the Commercial-item Test Program at *FAR 13.5*. When the research team reviewed these files, we found a majority of the files had information not required under *FAR 13.5*. There is nothing technically incorrect with having this additional information, but adding more paperwork is certainly not the intention of *FAR 13.5*.

E. Compare and Contrast: SAP vs. Large Contracting

Earlier, this chapter expounded on the steps taken by both large contracting and SAP to ensure customer demands are satisfied in the most efficient manner and

⁶⁸ GSA, DoD, NASA, *Federal Acquisition Regulations Part 13* (Washington, DC: authors, 2005).

⁶⁹ Ibid.



through the most economical allocation of government resources. For comparison purposes, their similarities and differences are grouped here in an effort to highlight where resource savings would be available through SAP. Undoubtedly, it is the objective of each of these methodologies to ensure all contracts are awarded properly and, thereby, to reduce the government's exposure to risk and unnecessary expense. To this end, both systems utilize similar procedures that:

1. Insist customers submit accurate Statements of Work (SOW). These SOWs must clearly detail the customer's requirement specifications and performance attributes comparative to the complexity of the request.
2. Maintain the integrity of the contract process through market research prior to solicitation in the attempt to preserve open and free competition and determine a fair and reasonable price.
3. Solicit all requisitions over \$25K through the automated Federal Business Opportunities (FEDBZOPS) process as mandated by the *FAR*.

The most notable difference between SAP and large contracting acquisition is that of cycle-time. FISCSD's goals for cycle-time are outlined below and advertised in their *Regional Contracts Department Customer Guide*. Procurement Action Lead Time (PALT) is a primary performance (time-to-execute) metric that all contracting offices are accountable to maintain.



Table 17. FISC San Diego Processing-time Goals⁷⁰

<u>Dollar Threshold</u>	<u>Processing Time Goal (PALT)</u>
Requirements < \$25K	20 Days
Requirements \$25K to \$100K	30 Days
Requirements \$100K to \$5M	FISC San Diego will contact you within five days of receipt of your requisition. At this time, we will work with you to develop a mutually agreeable milestone plan, and award the contract in accordance with the plan.

From Table 17, it is evident that the goal for SAP acquisitions less than \$100K is no longer than 30 days, but the PALT for any contract over that amount is established on a case-by-case basis. In order to ascertain a timeframe reference for acquisitions above \$100K, researchers rely on references and personal observations. COMFISC publishes submission date requirements in their *Customer Guide for Large Contracts over \$100,000*. (See above—Table 17.)

Table 18. FISC San Diego Requirements Submission Deadlines⁷¹

24. ACQUISITION SUBMISSION DATE: To ensure that requirements with expiring funds are obligated prior to the end of FY06, including those requirements with a contract award date of 01 October 2006, adherence to cut-off dates is critical to successfully meet customer needs.	
<u>Due Date</u>	<u>Estimated Amount</u>
28 APR 06	OVER \$1 MILLION
26 MAY 06	\$100,001 TO \$1 MILLION
11 AUG 06	\$25,001 TO \$100,000
25 AUG 06	\$2,501 TO \$25,000

⁷⁰ Compiled by researcher; derived from FISC San Diego, *Customers' Guide*, 2005.

⁷¹ Ibid.



As evidenced by the dates above, COMFISC believes large contracts up to and beyond \$1M can be accomplished within 4 and 5 months respectfully. It is the researcher's contention, based on contracting files reviewed, that these dates are best-case scenarios and not indicative of the average customer cycle-times for large acquisitions. Research conducted at FISCSD included the sampling of approximately 30 contracting files of various dollar amounts and acquisition types for familiarization purposes. A third of those surveyed were contracts applicable to this project—they were in excess of \$100K and competed in the market. While not a statistically valid observation, it is true, nonetheless, that every one of those contracts took between 6 to 18 months to complete. Using a \$5M commercially available requirement example, the researcher estimates that the entire process, without mishap, would take 10 months to award.

A closer examination of the processes for SAP and large contracting reveals major differences in the amount of time each process requires for common steps. All days reported below are working days only.

1. Following receipt of a requirement, the time required to work out a proper SOW—including the development of an acquisition strategy—is estimated to take 6 days for SAP; large contracting, on the other hand, entails four separate customer meetings consuming approximately 24 days of processing time.
2. Pre-solicitation activities take 15 days for large contracting (until a solicitation is issued). This time is consumed with another conference requirement of determining how best to accomplish solicitation. Obviously, relying on the marketplace as the solution for competitive concerns, SAP requires only 1 day to develop a request quotation.
3. Source-selection activities for SAP involve 10 days of solicitation on FEDBZOPS. Solicitation for large contracting requires 45 days and involves a pre-proposal conference.
4. Award activities following the receipt of quotes for SAP take just 2 more days (for evaluation and award steps to be completed). Large contracting, however, still has many requirements. After receiving quotes, contract specialists must hold evaluation and contract-review boards, allow three discussion periods with competitors, and prepare



several briefs and reports for public review. According to the flowchart, these required meetings and postings take an additional 120 days to complete.

In summary, most SAP purchases above \$100K cannot realistically be expected to be awarded within 30 days given their anticipated increased complexity. More importantly though, the elimination of all the discussion and reporting requirements imbedded in the large-contracting process will result in abundant time and resource savings for all stakeholders concerned.

F. SPS “built in” Protocol Utilizing Monetary Breakdown Indicated Above

The Standard Procurement System (SPS) *Day-to-day Users’ Guide* was reviewed to determine if the system was able to capitalize on the benefits of the *FAR Chapter 13.5 Test Program*. The benefits which technology could provide the contract specialist cannot be minimized in discussions about the entire contracting process. Currently, there appears to be no way to capitalize on the technology when it comes to the SPS system and the *FAR 13.5 Test Program*. The Test Program is not mentioned specifically in the *Day-to-day Guide*, but the threshold of SAP is mentioned. The mentioning of said thresholds is on page 52 of a 53-page document. Most workers will not wade that far into a users’ guide. The option of utilizing the *FAR 13.5 Test Program* must be offered clearly and much earlier in the users’ manual. Once the *FAR 13.5 Test Program* option has been selected, only the required supporting documents should be tied to that menu choice. Only when such options and guidance is available will the DoD be able to truly get a grasp on any potential cost savings.

G. Procurement Performance Management Assessment Program (PPMAP)

The PPMAP is, in essence, an internal process and product review tantamount to an internal audit. All FISCs are required to have this internal review on a regularly recurring basis, usually at least once in a 24-month period.



The PPMAP process includes a file review for monitoring the degree of compliance with statutory, regulatory and governing instructions in the conduct of business. The researcher determined that the PPMAP criteria currently utilized doesn't include a provision for monitoring *FAR 13.5* Test Provisions. PPMAP thoroughly reviews a sampling of contract files for compliance with statutes such as the *Competition in Contracting Act* (CICA) and a plethora of other things related to sound business practices. Research indicates that constructive feedback to buyers and management is a direct result of the PPAMP process. However, PPMAP criteria do not currently examine the extent of *FAR 13.5* utilization nor the capitalization on the efficiencies and effectiveness of such use.

G. Observations Found from Researcher's Site Visit

The following items/actions were observed during the site visit:

- The majority of personnel we randomly talked to were aware of the Commercial-item Test at *FAR 13.5*.
- There appeared to be no sense of urgency. When we inquired about specific acquisitions, we were provided detailed files which showed a step-by-step listing of all activities taken to acquire a certain item.
- The recurring theme was that new work was distributed based on the current workload of the available 1102/1105s.
- PMAT evaluation and review criteria for *FAR 13.5* provisions are not in place.

H. How Should the Requisitions Flow?

Earlier in this chapter, a broad picture of the way requisitions are processed was illustrated. Below, there are two illustrations. The first illustration depicts the questions asked currently when determining what contracting protocol to follow. The second illustration depicts this researcher's opinion of how the protocol determination should be decided. These two illustrations fit between Steps 1 and 2 of Figure 21.



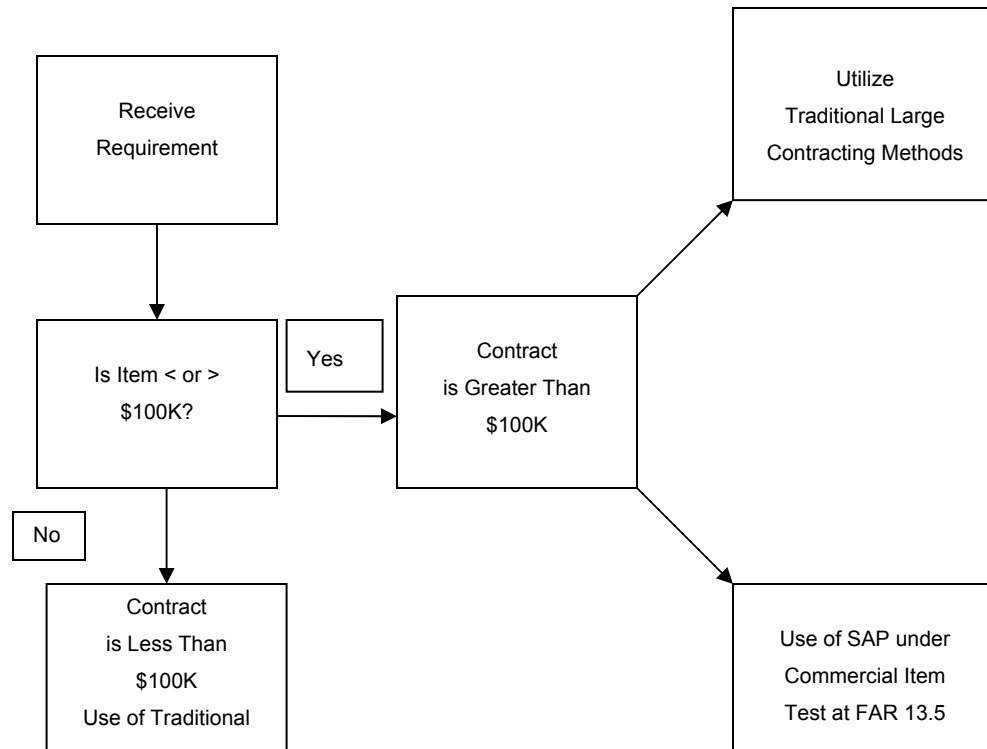


Figure 22. Current Protocol Determination⁷²

Currently, the determining factor when deciding upon a contracting course of action is whether or not the price of the acquisition is greater or less than \$100K. Current protocol is in place for items based solely on the answer to this price-level question. Metrics are also in place for SAP and large contract acquisition. For SAP, the metric is cycle-time—the time it takes from the receipt of the requisition to the award of the contract. For large contracts, the metric is WIP, or work-in-process. There was no published metric to capture the use or benefits of the Commercial-item Test at *FAR 13.5*. A review of contract files found that when the Contract Specialist assigned claimed he or she utilized the Commercial-item Test at *FAR 13.5*, these files were remarkably similar to those which utilized traditional large contracting

⁷² M.A. Ziegler, research team member, Summary of Current Requisition, 19 November 2006. Ziegler examined protocols and mapped processes to determine document flow, decision points, etc.



methods. These observations were independently confirmed when CAPT James Barnard addressed an assembled group of acquisition students at the Naval Postgraduate School. CAPT Barnard stated that time spent on an acquisition totaling approximately \$95K measured approximately 8 hours, whereas an acquisition totaling approximately \$110K took close to 200 hours to procure.⁷³

The diagram below represents, in the opinion of the researcher, the ideal way in which protocol should be determined:

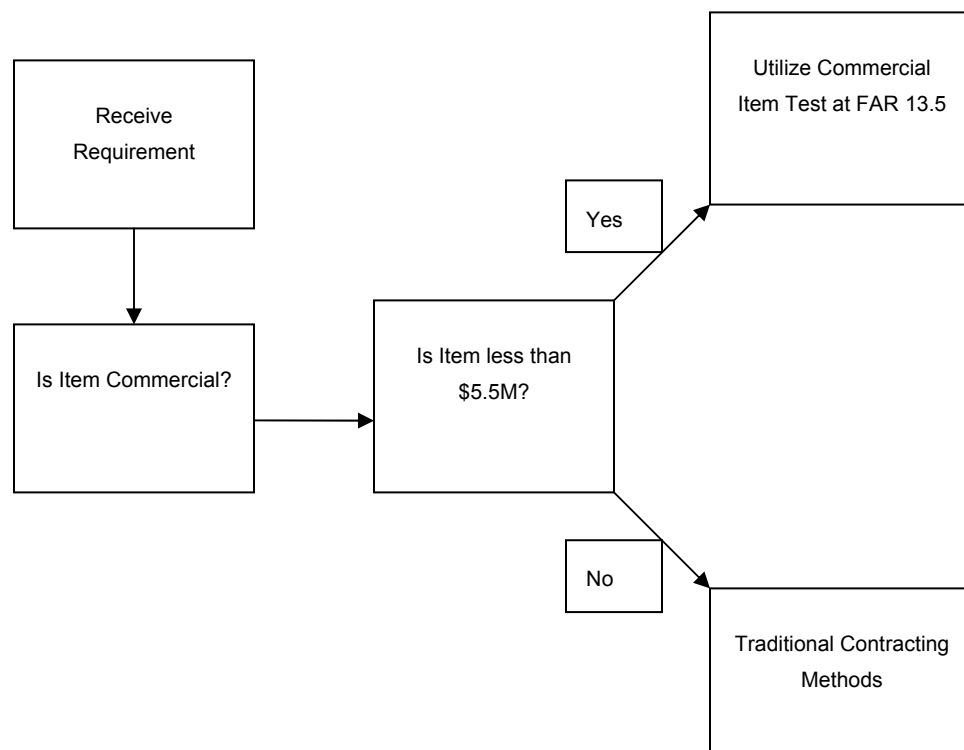


Figure 23. Proposed Protocol Determination⁷⁴

The key decision in any acquisition should be the determination of whether or not the required item is commercial. Research must be conducted immediately to

⁷³ From oral presentation by CAPT Barnard at NPS on 26 October 2006.

⁷⁴ M.A. Ziegler, research team member, Summary of Current Requisition, 19 November 2006.



determine this differentiation. This researcher further asserts that the entering argument in this determination is that the item is commercial unless it is shown to be non-commercial. Once that decision is made, the rest of the process flows clearly and consistently. Since the move to commercial items is becoming more prevalent, it is likely that the majority of transactions at FISC San Diego would follow the flowchart above to the Commercial-item Test at *FAR 13.5* option. If so, items would be purchased more economically and efficiently.

This method is not without risk. Ultimately, the contracting personnel must be afforded the ability to identify the commerciality of an acquisition. Some helpful hints to determine commerciality are as follows:

- Does item meet the following definition of a commercial item?⁷⁵
 - any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than government purposes and:
 - has been leased, sold, or licensed to the general public or
 - has been offered for lease, sale, or license to the general public

In other words, is this acquisition for something that is solely for government use?

- Were prior items of a similar nature made via commercial means?
- Have similar requirements been previously acquired through the use of the Commercial-item test at *FAR 13.5*?

The fear of making a mistake should not cause the contracting officer to add unnecessary steps to the contract process. Doing so would only delay the award and increase the overall cost of the contract.

⁷⁵ GSA, DoD, NASA, *Federal Acquisition Regulations Part 2.101* (Washington, DC: authors, 2005).



I. Summary of Procedures and Protocol

It is clear to this researcher that careful attention was given to the protocol and policies at FISC San Diego. It is this same care and attention which has made it nearly impossible to reap the benefits Congress has provided to the Department of Defense via the *FAR Chapter 13.5* Test Program. Current decision-making at FISC San Diego does not allow for the proper utilization of the Commercial-item Test at *FAR 13.5*. Several factors contribute to this.

First, published protocols establish the SAP threshold at \$100K without any reference to the availability or potential benefits of the *FAR 13.5* test procedures. This is clearly evident in the established FISC *Customer Guide*, according to customer requirements/processing procedures on the FISC contracting web-page, and in internal operating instructions.

Second, as indicated previously, the 1102 community may be reluctant to embrace the *FAR 13.5* streamlined protocols without a clear governing framework of defined customer and 1102 guidance.

Third, the *FAR 13.5* provisions are not included as an integrated protocol with the PMAT review process.

Without a change in the acquisition process protocols to the system described above, the DoD's requisition fulfillment will continue to be delayed, and greater efficiencies and effectiveness will be disregarded.



VI. Conclusions and Recommendations

A. Introduction

It is clear from the research conducted in this project that the Navy is not **fully** capitalizing on the efficiencies and effectiveness of the *FAR 13.5* SAP Test Program. Neither oversight reporting nor policy documents within the Navy adequately detail the Test Program's employment or resultant savings. While there are many reasons why the legislation is not being fully exploited, it is this chapter's objective to highlight specific problems with the current situation and recommend subsequent courses of action to direct the way ahead. The next three sections here will review: 1) the DD Form 350 database for improvements to government oversight; 2) contracting office designs that optimize structure and manning issues; and 3) the procedures and protocols that will induce greater SAP employment.

While utilization of the *FAR 13.5* Test Program is being reported by FISC contracting activities within the DD350 Federal Procurement Data System, the research indicates that: 1) given current levels of reported utilization, there is still a large portion of total business that qualifies for and can utilize the *FAR 13.5* protocols; and, 2) for those contract actions which actually were processed under the *FAR 13.5* banner, the procedures actually employed failed to fully capture the streamlined protocol in *FAR 13.5* and, hence, were not conducted as effectively and efficiently as possible.

However, it must be emphasized that NAVSUP, COMFISC, and the FISC Code 02 contracting directors are fully cognizant of the issues raised within this report, and have determined to review and address any additional opportunities to exploit the *FAR 13.5* provisions to the fullest. During preliminary briefings of the conclusions of this research, key stakeholders of the Navy's field contracting business, including NAVSUP Code 02, CAPT Steve Shapro, COMFISC, as represented by CAPT Jim Barnard and several FISC Code 02 representatives, as



well as CDR Dennis O'Rear, FISC Jacksonville Code 02, all acknowledged the need to create the framework for better implementing the provisions and garnering any additional efficiencies and effectiveness they will provide.

B. Conclusions and Recommendations:

The following conclusions and recommendations are made based on the tier-level of required action.

1) Congress:

- i. Conclusion: The current *FAR 13.5* provisions are temporary in nature. They are scheduled to expire in January 2008. The temporary nature of the current provisions creates problems in several ways. Contracting activities are hesitant to invest resources and capital to train and structure the workforce and associated protocols based on a statutory and regulatory construct that may not be permanent. Subsequent extensions of the *FAR 13.5* provision as a temporary measure, while ensuring the continued availability of the *FAR 13.5* provision, exacerbates reluctance to invest human and other resource capital into greater compliance.
- ii. Recommendation: Recommend that Congress make *FAR 13.5* provision permanent based on preliminary evidence that the protocols can and do create the efficiencies and effectiveness envisioned by the original legislative and regulatory construct. The Committee on Government Reform has been the major impetus to getting the originally constructed provisions into the *FAR*. This committee should be instrumental in changing the provisions to a permanent status. The Office of the Secretary of Defense, along with key stakeholders from the Assistant



Secretary of the Navy and other service components, should take immediate and deliberate action with Congress to effect a permanent *FAR* provision.

2) Office of the Secretary of Defense (OSD):

i. Conclusion:

1. OSD has embraced the need for doing business in a more business-like manner.⁷⁶ Mr. Shay Assad, Office of the Secretary of Defense for Acquisition, Technology & Logistics supports initiatives that strive to create the best business solutions for the Government and industry.
2. DD350 Reporting lacks the capability to capture critical information related to *FAR* 13.5 (see Chapter III).

ii. Recommendations:

1. Recommend that OSD AT&L, as the best spokesperson for the DoD, 1) initiate actions aimed at inserting a permanent statutory and regulatory provision into the *FAR*, and 2) issue a policy directive mandating that all requirements meeting commercial-item designation within current statutory and regulatory criteria (see Chapter I) utilize *FAR* 13.5 procedures unless compelling evidence indicates that the items or services being requested are NOT commercial according to the same. This requirement will meet the Jacques Gansler protocol

⁷⁶ Mr. Shay Assad, Office of the Secretary of Defense for Acquisition Technology & Logistics, 7 December 2006. Paraphrased from a presentation to the researcher and selected faculty and students of the Naval Postgraduate School.



to treat all requirements less than \$5.5 million as commercial from the onset.⁷⁷ A clear majority of the products and services being procured at this threshold will meet the statutory and regulatory definition, so every effort should be made to make use of the *FAR 13.5* provision without creating an elaborate and complex set of criteria on which to base the decision.

2. DD350 Reporting: The DD350 reporting system is not designed to capture all management data required by a contracting command, nor could it. However, the DD350 can make better use of limited data field availability. Data fields for processing time (cycle-time or PALT) are being captured by most FISCs, but are NOT reported on the DD350. Recommend that this critical component of efficiency and effectiveness be included in the DD350 reporting requirements.

3) NAVSUP:

i. Conclusions:

1. NAVSUP does not currently have clearly and concisely defined protocol and guidance for properly selecting requisitions for, and executing streamline protocols related to, the *FAR 13.5* procedures. Existing protocols continue to emphasize delineation or protocols along a \$100,000 threshold, which by default require all actions greater than \$100K to utilize non-streamlined and

⁷⁷ Jacques Gansler, University of Maryland, and former Undersecretary of Defense, Acquisition and Technology, phone conversation with the researcher, January and February 2006.



traditional large contract protocols. In deference, NAVSUP may not want to invest in changes until the *FAR 13.5* provisions become permanent.

2. NAVSUP's PPMAP (Procurement Management and Assessment Program) guidance does not emphasize use of nor compliance with *FAR 13.5* provisions. This creates the impression among FISC PMAT reviewers and contract specialists that the *FAR 13.5* provisions are not a priority in the managerial oversight of NAVSUP.
3. DD350 Reporting fails to capture critical managerial data related to *FAR 13.5*.

ii. Recommendations:

1. Publish clear and concise guidance in harmony with all statutes, regulations, and higher authority (see previous recommendations) that emphasizes and calls for the mandatory use of *FAR 13.5* protocol and classifies all requisitions falling within the \$5.5 million limit as commercial items (goods and services) unless otherwise determined. All such determinations of non-commerciality should be made on an exception basis—and not as a matter of automatic treatment of requirements.
2. Include clear and concise guidance for the PMAT reviewers to examine:
 - a. Total *FAR 13.5* utilization at each FISC
 - b. Compliance to the aforementioned protocols



- c. Extent to which the *FAR 13.5* streamlined procedures were actually employed on reported actions
- 4) COMFISC and FISC Code 02s: This level is where the actual conduct of *FAR 13.5* protocol takes place. As such, it's imperative that COMFISC and FISC Code 02s are given all the tools and resources to make sound business decisions related to *FAR 13.5*.

- i. Conclusions:

1. Significant progress has been made to incorporate *FAR 13.5* procedures among all the FISCs. However, it is clear to the researcher that more progress can and should be made to fully capitalize on the *FAR 13.5* provisions and to fully employ the work which these activities have already invested in the process.
2. The published protocols preclude effective utilization of *FAR 13.5* protocols. FISC-published and -exercised protocols, including the customer service manuals, are all aligned along the traditional \$100K SAP-vs.-large contracting line. This means that customers, 1102 Contract Specialists, and 1105 Purchase Agents all operate under the overarching and well-defined premise that anything over \$100K is a large contract unless determined otherwise (see prior chapters for this discussion).
3. FISC organization is primarily designed along supported customer lines, but within this structure, assigns work based on caseloads, specialties, warrant levels, and



expected protocol utilization (see above). This organizational structure has some clear advantages compared to alternatives. However, there is room for improvement in the organizational structure that is iterated below.

ii. Recommendations:

1. Recommend COMFISC incorporate all the aforementioned recommendations iterated for OSD and NAVSUP; also recommend requirement extension for all FISCs.
2. Create managerial framework for incentivizing the utilization of *FAR 13.5* provisions. Ensure that solid monitoring and benchmarks are in place and utilized to measure critical components of efficiency and effectiveness.
3. Incorporate *FAR 13.5* protocol into PPMAP review processing.
4. Organize a *FAR 13.5* “Test Cell” designed to specifically process a large number of actions up to the \$5.5 million threshold under *FAR 13.5*. This “Test Cell” should be staffed with 5 to 10 1102 Contract Specialists and support staff. This cell will execute all its assigned actions utilizing SAP exclusively. Metrics and PPMAP reviews will be designed to ensure that protocols are correctly followed and that the extent of cycle-time and monetary reduction for the transactions follows established baselines.



C. Final Thoughts!

FAR 13.5 Test Program protocols provide greater efficiencies and effectiveness by reducing cycle-time and transaction costs. From cycle-time reduction alone, processing time can drop from 6-8 months to, in most cases, less than 45 days. Per transaction costs can drop from an average of \$9,500 to less than \$1,000.

FISCs process nearly 60,000 contract actions per year. The FISCs are constantly looking for methods to improve customer support and performance parameters. There is clearly an opportunity to make greater and better use of the *FAR 13.5* provisions.



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Appendix A. Commercial Item Memo from Gansler



THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

JAN 5 2001

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Commercial Acquisitions

Defense acquisitions should emphasize performance-based requirements, include provisions that enable commercial practices, and encourage the participation of nontraditional commercial entities. The efforts of all members of the acquisition team are crucial to achieving increased use of commercial acquisitions, but the input of requirements personnel and program managers is particularly essential, since they impart knowledge of available technology to the team. To the maximum extent possible, commercial acquisitions should be conducted using Federal Acquisition Regulation (FAR) Part 12. The use of FAR Part 12 is designed to provide the Department of Defense (DoD) with greater access to commercial markets with increased competition, better prices, and new market entrants and/or technologies.

In March 1999, I directed the Deputy Under Secretary of Defense (Acquisition Reform) (DUSD (AR)) and the Director of Defense Procurement to charter an Integrated Process Team (IPT) to review DoD commercial item determinations and evaluate whether additional guidance, tools, or training were necessary. The IPT found that, while some progress has been made, many obstacles to accessing commercial items remain. These obstacles include inconsistent commercial item determinations, weak market research, and confusion concerning pricing of commercial items. Additionally, lessons learned as to the applicability of FAR Part 12 determinations are not being shared across DoD buying offices. These factors unnecessarily increase workload and acquisition cycle time.

To help overcome these barriers to accessing commercial items, I am taking the following actions:

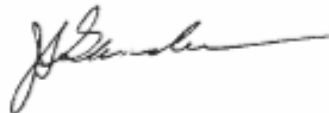
- ◆ Providing clarification on FAR Part 12 use to yield appropriate consistency across DoD;
- ◆ Establishing goals that DUSD(AR) will track to ensure the Department continues to make necessary progress;
- ◆ Requesting each Service and Defense Agency to provide me, within 90 days of the date of this memorandum, an implementation plan outlining its methodology to ensure we meet our commercial item acquisition goals; and
- ◆ Requesting that the IPT determine the feasibility of establishing a pilot program so that the Services and Agencies may collect market research and Commercial Item Determinations in a central database, or developing tools to assist in ensuring commercial item determinations are reasonably consistent. I request that the recommendation regarding this action be presented to DUSD (AR) within 90 days of the date of this memorandum.

April 7



The attachment provides some immediate clarification. In addition, DUSD (AR) and the components are developing a Commercial Item Handbook to provide further guidance on sound business strategies for acquiring commercial items. This guidebook is scheduled for release in February 2001.

To effectively provide our warfighters with the technological advantage to win future conflicts, we must uniformly look first to the commercial marketplace before developing new systems; upgrading legacy systems; or procuring spare parts and support services.



J. S. Gansler

Attachment:
As stated



CLARIFICATION OF FAR PART 12 FOR CONSISTENCY

In implementing the guidance of FAR Part 12, misinterpretations and/or inconsistent applications have occurred with regard to the following definitions and issues: commercial-off-the-shelf; modified commercial items; of a type; Government-off-the-shelf; market versus catalog price; requirements definition; conduct of market research; use of Commerce Business Daily (CBD) Note 26; and, sole-source situations. The following clarifications are offered to create consistency across the Department.

Commercial Off-the-Shelf (COTS): A product does not have to be commercial-off-the-shelf (COTS) to meet the "commercial item" definition. COTS items are a subset of commercial items. The commercial item definition is much broader than products that are presently available off-the-shelf. It includes items that have only been "offered" for sale, lease, or license to the general public, as well as those that have evolved from a commercial item and are offered for sale, even if not yet available in the commercial marketplace. However, evolved items must be available in the commercial marketplace in time to satisfy solicitation delivery requirements. In addition, all other elements of the commercial item definition at FAR 2.101 must also be met.

Modified Commercial Items: When items available in the commercial market cannot meet the Department's need, DoD must determine whether market items can be or have been modified so that FAR Part 12 can be used. Two types of modifications are available: (1) modifications of a type available in the commercial marketplace; and, (2) minor modifications of a type not customarily available in the commercial marketplace made to Federal Government requirements. For modifications of a type available in the commercial marketplace, the size or extent of modifications is unimportant. For minor modifications, the item must retain a predominance of nongovernmental functions or physical characteristics.

"Of a Type": The phrase "of a type" is not intended to allow the use of FAR Part 12 to acquire sole-source, military unique items that are not closely related to items already in the marketplace. Instead, "of a type" broadens the commercial item definition so that qualifying items do not have to be identical to those in the commercial marketplace. The best value offer in a competitive Part 12 solicitation can be an item that has previously satisfied the Government's need but has not been sold, leased, licensed, nor offered for sale, lease or license to the general public (a nondevelopmental item as defined in 10 USC 403 (13)). In this scenario, the phrase "of a type" allows the best value offer to qualify for a Part 12 contract as long as it is sufficiently like similar items that meet the government's requirement and are sold, leased, licensed, or offered for sale, lease or license to the general public. In such instances, "of a type" broadens the statutory commercial item definition to allow Part 12 acquisition of a government-unique item that can compete with commercial items that meet the government's requirement. This avoids the undesirable result of shutting out otherwise price-competitive preexisting suppliers of government-unique items from Part 12 solicitations.

Government Off-the-Shelf (GOTS): GOTS is a commonly used term for nondevelopmental items (NDI) (as defined in 10 USC 403 (13)) that are Government-unique items in use by a Federal Agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement. The words "of a type" facilitate the acceptance of a best-value GOTS/NDI offer in response to a competitive FAR Part 12 solicitation when the offered GOTS/NDI items are sufficiently like similar items sold, leased, licensed, or offered for sale, lease or license to the general public.



Market Price versus Catalog Price for Services: The commercial item definition includes services of two general types: services in support of a commercial item; and, stand-alone services. In order to meet the commercial item definition, stand-alone services must be "based on established catalog or market prices." The price for the services must be based on either catalog prices or market prices.

"Catalog Prices" mean a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public.

"Market Prices" mean current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

The established market price for stand-alone services does not have to be published or written. Market research enables the Government to collect data from independent sources in order to substantiate the market price.

Requirements Definition: It is imperative that all members of the acquisition team are cognizant of available or emerging technology and that requirement statements reflect any available commercial solutions. Requirements personnel and contracting officers should work together to ensure that commercial items can be -- and are -- used. Contracting officers need the input, guidance, and support of requirements personnel (e.g., adopting more open system architectures, identifying possible commercial components and technologies) to enable the use of commercial item acquisitions. The key to this process is robust market research.

Market Research: Market research -- and the teaming it relies upon -- must be an ongoing activity throughout an acquisition, in order to gather the robust data needed to make smart acquisition decisions. Market research is not limited to locating commercial items, although that is one purpose of its conduct. At a minimum, market research should be used to define requirements, locate commercial best practices, and assist in determining price reasonableness.

Full Use of CBD Note 26: If market research establishes that the Government's need cannot be met by a commercial item, FAR Part 12 shall not be used. For proposed contract actions that require publication in the Commerce Business Daily (CBD), the contracting officer must include a notice to prospective offerors that the Department does not intend to use FAR Part 12 for the acquisition. For the Defense Department, this notification is accomplished through use of CBD Numbered Note 26. The Department must make full use of CBD Numbered Note 26, which reads as follows:

Based upon market research, the Government is not using the policies contained in Part 12, Acquisition of Commercial Items, in its solicitation for the described supplies or services. However, interested persons may identify to the contracting officer their interest and capability to satisfy the Government's requirement with a commercial item within 15 days of this notice.

Sole-Source Situations: Contracting officers and requirements personnel should work together to avoid sole-source situations. Competition is enabled when needs are broadly stated



in terms of performance outcomes. However, a sole-source situation may be unavoidable, presenting pricing challenges. Tools and techniques are available for assisting in the price reasonableness determination for sole-source commercial item procurements. Sometimes, sole-source suppliers may attempt to exploit the lack of competitive markets and demand unreasonable prices. In such circumstances, the team should consider revising negotiation strategies to consider innovative solutions (e.g., strategic supplier alliances); buying the bare minimum quantities and working to restate the need to expand possible solutions and qualify alternate suppliers; and ultimately upgrading systems to current, commercial technology. In some cases, it may be necessary to escalate negotiations. The first escalation should be to the Procurement Executive, then, if necessary, to the Head of the Agency.

ESTABLISHMENT OF COMMERCIAL ITEM ACQUISITION GOALS

Commercial item acquisition using FAR Part 12 procedures is designed to provide greater access to commercial markets. Benefits include increased competition; use of market and catalog prices; and, access to leading edge technology and "non-traditional" business segments. The Road Ahead published on 2 June 2000 by USD (AT&L) established as a goal "an accelerated rate of increase in the dollar value of FAR Part 12 acquisitions with primes". The baseline for this goal is \$12.6 billion in FY 1999. Therefore, goals for Part 12 acquisitions are established for the components as follows:

1. Each Service and Defense Agency should double the dollar value of FAR Part 12 contract actions awarded in 1999 by the end of fiscal year (FY) 2005. This would bring the DoD total FAR Part 12 contract actions from \$12.6 billion to \$25.2 billion.*
2. Each Service and Defense Agency should strive to increase the number of FAR Part 12 contract actions awarded to 50 percent of all Government contract actions awarded by the end of FY 2005.*

(*For purposes of these goals, a contract action is defined as any new contract award and/or new delivery order placed against a contract awarded with a value greater than \$25,000.)

While it is important to emphasize use of Part 12 acquisitions where appropriate, it is also important to balance these goals with the objectives to increase competition, achieve access to leading edge technologies and non-defense business segments. Therefore, in evaluating each of the goals established above, each Service and Defense Agency, together with DUSD (AR) should ensure that these objectives are not achieved at the expense of the use of product support requirements, use of strategic alliances, consolidated support service contracts or multiple award type contracts. These overlapping objectives may, unavoidably, create challenges for the components. These issues should be addressed in the implementation plans due to DUSD (AR) within 90 days. Specific activities, such as the Defense Logistics Agency, may also need to establish goals above these thresholds, depending on the nature of their business.



Commercial Policy Coordination

Clarification of Commercial Item Policy

COTs – General Counsel recommended adding a sentence to the end of the paragraph, which was accepted.

Of a Type – The Inspector General strongly recommended that the “of a type” characterization be clarified. General Counsel wrote the clarification provided in this memorandum.

Modified Commercial Items – There was universal concern from all parties regarding the statement “For minor modifications of a type not customarily available, the modifications generally should not alter the nongovernmental function or essential physical characteristics by more than 50 percent.” This clarification has been removed from the memorandum. Additionally, as recommended by the Air Force, the handbook will stress the importance of adequately documenting the logic leading up to these determinations.

Market Price vs Catalog Price – Both DCAA and the IG expressed concern regarding the use of the phrase “through competition” used in the market price definition. While this policy memorandum was being processed, the Federal Acquisition Council published a proposed case 2000-303 containing the proposed definitions used in this policy memorandum. That case is now pending publication as a final rule. This policy is consistent with that final rule, notwithstanding the DCAA and IG concerns.

Market Research – DLA wants to add the term “appropriate to the circumstances” to the discussion of market research. Generally that’s good, but in this case it enables DLA personnel to do the absolute minimum, like checking who we bought it from last time, and still be in compliance. We will address this issue instead, in the commercial handbook.

Goals

The draft policy memorandum circulated, used the metrics established in *The Road Ahead* approved by the USD (AT&L) in June 2000. Each service expressed concern regarding the metrics:

Air Force & Army – Supported using number of actions as a goal but not dollars. AF recommended changing the title to emphasize goals.

Navy – Characterized the goals as arbitrary and capricious, stating that they could not be met, recommending as an alternative very conservative goals.

DLA – Recommended changing the approach to recognize that the goals need to be tailored to the business base of the activity. DLA already meets and exceeds the stated goals.



Defense Procurement – Recommended conducting an analysis of progress to date with Part 12 acquisition, before projecting further goals.

DCMA – Recommended a two stage approach: 1) asking the services for implementation plans 2) tailored to the activity.

IG – Noted that the measurement of only actions and dollars (i.e. volume) did not recognize that this policy area is complex and must balance the need to consolidate acquisitions (e.g. strategic alliances, product support pilot programs, or consolidated support service requirements) with the need to attract non-defense companies, and sustain competition.

Resolution - DUSD (AR) does not fundamentally disagree with the IG or component concerns, however, it is essential that stretch goals be established for the department regarding Part 12 acquisitions to ensure leadership involvement and to raise awareness. DCMA's recommendation is a sound one, as is the IG approach, which when combined leads to a policy that modifies the goals slightly, still ensures the goals will raise awareness but requires the development of an implementation plan regarding Part 12 acquisition. It also clarifies that component progress will be measured at the service level, thereby allowing for potential variation within that component. This approach also allows DLA to promote their tailored plan.

Commercial Item Determinations Database

DLA – Recommended that DUSD (AR) fund the development of an on-line decision resource tool for the acquisition workforce instead of a database.

AF/Navy/Army – While generally in support of this approach during the circulation of this policy in draft, each has now expressed concerns regarding the resources involved in supporting the database, even the pilot effort.

Defense Procurement – Expressed concern regarding the resources involved and stated that this information should not be intended to provide justification on future determinations.

Resolution – Clearly, we do not yet have resolution on this issue. The memo has been modified to keep the IPT in place and to review whether to develop tools or the data base, within two months, reporting to DUSD (AR) and DP as to how to proceed further.

Sole Source Pricing Trends

Despite the fact that the IG has been a member of the working group that developed this policy clarification, they chose to wait until coordinating on this policy to indicate that the primary issue requiring clarification was sole source pricing trends. The working group did not identify this issue specifically. In their second written non-concurrence,



they stated that an escalation sequence needed to be established that included OSD intervention for pricing issues.

Resolution – DUSD (AR) has specifically added language to address the IG's concerns, however recommends that the escalation process should be contained within the services/components. Specifically, The first escalation should be to the Procurement Executive, then, if necessary, to the Head of the Agency. This position was coordinated with the Section 803 pricing working group, chaired by Defense Procurement.

Unified Management

IG - Despite the fact that the IG has been a member of the working group that developed this policy clarification, they chose to wait until coordinating on this policy to remind DUSD (AR) that, in their opinion, Section 803 (d) of the 1999 Authorization Act had not been implemented. The working group did not identify this issue specifically.

Resolution – DUSD (AR) does not think this policy memorandum is the appropriate forum to resolve this issue.

Emphasis on Program Managers

IG – Requested that the role of the Program manager be emphasized. The tone of the memo has been strengthened to address their concerns.



Appendix B. DoN Commercial-item Test *FAR* 13.5 Memo



DEPARTMENT OF THE NAVY
NAVAL SUPPLY SYSTEMS COMMAND
3400 CARLISLE PIKE
PO BOX 3000
MECHANICSBURG PA 17055-0701

TELEPHONE NUMBER
COMMERCIAL
AUTOVON
IN REPLY REFER TO:
4200
Ser 21C3/9053
SA99-11
8 Feb 99

From: Commander, Naval Supply System Command

Subj: DEPARTMENT OF NAVY POLICIES FOR THE USE OF THE COMMERCIAL
ITEM TEST AT FAR 13.5

Ref: (a) NAVSUP Policy ltr SA98-19

1. A recent data call for metrics evaluating DON usage of the Commercial Item Test Program at FAR 13.5 revealed weaknesses in the Department's approach to fully integrating the test program into our business practices. Reference (a) provided DON guidance on the use of the Commercial Test Program and requested that DON activities use the authorized procedures to the maximum extent practicable. The following guidance is provided to address field concerns regarding the implementation of the test program.

2. FAR Part 12 provides specific guidance on the acquisition of commercial items. Based on appropriate market research, a determination of commerciality should be made in all contract files. For requirements between \$100,000 and \$5M, the contracting officer should determine whether the use of the test program is appropriate for that instant procurement. If appropriate, the contracting officer should use the procedures found in FAR 13.5. Use of those procedures would authorize the contracting officer to; use the SP1449 as a "Request for Quotation" in conjunction with the synopsis procedures in FAR Part 12; use "simplified acquisition negotiating techniques" common to awards under simplified acquisition procedures, and use the procurement methods found in FAR Part 13 (e.g. Blanket Purchase Agreements (BPAs) and Purchase Orders).

3. Unilateral purchase orders are the preferred method to award contracts under the Commercial Item Test Program. Contracting officers are encouraged to use unilateral awards to the maximum extent practicable. However, the contracting officer may award a bilateral purchase order based on the complexity and nature of the requirement.



Subj: DEPARTMENT OF NAVY POLICIES FOR THE USE OF THE COMMERCIAL
ITEM TEST PROGRAM

4. The following guidance supercedes guidance previously provided by reference (a). Contracting officers should use the same standard procurement identification numbers (PINs) found in DFARS 204.70 for all simplified acquisition awards including those under the test program. In addition, contracting officers are reminded that when coding the DD Form 350 for commercial acquisitions under the test program, the following blocks should be checked; block B-13A should be identified by the number nine (9), block B-14 must be checked with a C or D, and block C-14 should be checked with a (y).

5. In a continuing effort to support the streamlining of the procurement process, DON has made an affirmative recommendation to DOD to make the procedures identified in the Commercial Test Program a permanent part of the regulation.

6. DON HCAs will add the use of the Commercial Item Test Program as a "Special Interest Item" in future Procurement Management Reviews.

7. The test program offers contracting officers an excellent opportunity to streamline business practices. Contracting officers must use the test program to the maximum extent practicable.


EVA M. ROBINSON
By direction



Appendix C. DoN DUSD Commercial Pricing Memo



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1300 NAVY PENTAGON
WASHINGTON DC 20350-1000

AUG 31 2000

MEMORANDUM FOR DISTRIBUTION

Subj: OBTAINING INFORMATION FOR PRICING SOLE-SOURCE COMMERCIAL
ITEMS

Encl: (1) DDP memorandum of August 2, 2000

Enclosure (1) is provided for your information and action.
Please ensure that all of your organization's contracting and
pricing personnel are made aware of the clarifying guidance
provided.

A handwritten signature in dark ink, appearing to read "M. P. Ziegler".

M. P. Ziegler
CAPT, SC, USN
Executive Director (Acting)
Acquisition & Business Management

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OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

August 2, 2000

DP/CPF

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT), ASA(AL&T)
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RD&A)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
EXECUTIVE DIRECTOR FOR PROCUREMENT MANAGEMENT
(DLSC/DLA)

SUBJECT: Obtaining Information for Pricing Sole-Source
Commercial Items

Last year, pursuant to Section 803 of the Fiscal Year (FY) 1999 Strom Thurmond Defense Authorization Act, Parts 12 and 15 of the Federal Acquisition Regulation (FAR) were revised to better address the pricing of commercial items. These revisions clarified the guidance at FAR 15.403-3 regarding the need for contracting officers to obtain information from offerors to support a determination of price reasonableness when information from other sources is insufficient to make the determination. In setting forth the various price analysis techniques used to establish price reasonableness, FAR 15.404-1(b) states a preference for comparison with prices previously proposed and paid for the same or similar items. To perform these price comparisons, particularly when pricing sole-source commercial items, the contracting officer must have access to pertinent historical pricing information.

Pursuant to obtaining this information, in its report of June 24, 1999, entitled "CONTRACT MANAGEMENT: DoD Pricing of Commercial Items Needs Continued Emphasis," the General Accounting Office (GAO) recommended that the DoD clarify the circumstances when it is appropriate to use the clause at FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (Oct 1997), to obtain historical pricing information. The GAO stressed the importance of understanding and using this information when pricing commercial item purchases from a sole source.



Please remind your contracting professionals that the clause at FAR 52.215-20 should be included in solicitations for sole-source commercial items when the contracting officer has a reasonable expectation that the offeror will request a commercial item exception to a requirement for submission of certified cost or pricing data, and that the offeror will need to provide, at a minimum, appropriate information on the prices at which the same or similar items have been previously sold.

Additional information may be requested to the extent needed to permit an adequate evaluation of the proposed price in accordance with FAR 15.403-3. However, as a matter of policy, FAR 15.402(a)(2)(i) states that offerors should not be requested to provide additional information if the contracting officer already has information, available from within the Government or from sources other than the offeror, that is adequate for evaluating price reasonableness. The clause at FAR 52.215-20 should be used only when information already available to the contracting officer is not adequate. Alternate IV to the clause should be used when identifying specific information needed from the offeror.

Questions regarding this matter may be addressed to Mr. Richard Brown, OUSD(A&T)DP/CPF, brownrg@acq.osd.mil, or by phone at 703-695-7197.



Deidre A. Lee
Director, Defense Procurement



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Appendix D. FAC 99.3 on Simplified C#19

Appendix E. *DFAR* Subpart 212

Appendix F. *DFAR* 213 Simplified Acquisitions

Appendix G. Cost to Obligate a Dollar

Appendix H. GAO RPT No reliable Test Data 2003

Appendix I. Pre-solicitation Strategy for SAP 2-17-06

Please contact Karey Shaffer at klshaffe@nps.edu to request a copy of the complete appendices associated with this sponsored report.



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